

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Nyasha Smith, Secretary of the Council
FROM: Charles Allen, Chairperson, Committee on the Judiciary and Public Safety
RE: Closing Hearing Record
DATE: August 27, 2021

CA

Dear Ms. Smith,

Please find attached copies of the Hearing Notice, Agenda and Witness List, and testimony for the Committee on the Judiciary and Public Safety and the Committee of the Whole's May 20, 2021 Joint Public Hearing on the Recommendations of the Police Reform Commission; B24-0094, the "Bias in Threat Assessments Evaluation Amendment Act of 2021"; B24-0107, the "Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021"; B24-0112, the "White Supremacy in Policing Prevention Act of 2021"; and B24-0213, the "Law Enforcement Vehicular Pursuit Reform Act of 2021".

The following witnesses testified at the hearing or submitted written testimony to the Committee:

i. Public Witnesses

1. Robert Bobb, Co-Chair, Police Reform Commission
2. Christy Lopez, Co-Chair, Police Reform Commission
3. Charles Brown, Public Witness
4. Perry Redd, Executive Director, Sincere Seven
5. Trupti Patel, Commissioner, ANC 2A03
6. Mo Pasternak, Commissioner, ANC 2B04
7. Danielle Robinette, Policy Attorney, D.C. Children's Law Center
8. Kaylah Alexander, Public Witness
9. Karthik Balasubramanian, Public Witness
10. Ron Thompson, Policy Officer, DC Transportation Equity Network
11. Jeremiah Lowery, Advocacy Director, Washington Area Bicyclist Association
12. Naïké Savain, Commissioner, Police Reform Commission
13. Talib Atunde, Representative, Fred Hampton Gun Club
14. Josephine Ross, Public Witness
15. Zina Charles, Public Witness
16. Liz Odongo, Director of Grants and Programs, D.C. Coalition Against Domestic Violence

17. Kylie Hogan, Director of Crisis Intervention Services, D.C. SAFE
18. Robert Pittman, Chair, 1D Citizens Advisory Council
19. Evan Douglas, Policy & Advocacy Fellow, D.C. Justice Lab
20. Patrice Sulton, Commissioner, Police Reform Commission
21. Emory Cole, Public Witness
22. Eduardo Ferrer, Policy Director, Juvenile Justice Initiative, Georgetown Law/Visiting Professor of Law, Juvenile Justice Clinic
23. Ronald Hampton, Commissioner, Police Reform Commission
24. Robin Nunn, Commissioner, ANC 2B03
25. Jeffrey Richardson, Commissioner, Police Reform Commission
26. Samantha Davis, Commissioner, Police Reform Commission
27. Bethany Young, Project Manager, Police Reform Commission
28. Madison Sampson, Consultant, Impact Justice
29. Marina Streznewski, Public Witness
30. Nassim Moshiree, Policy Director, ACLU of the District of Columbia
31. Natacia Knapper, Field Organizer, ACLU of the District of Columbia
32. Ahoefa Ananouko, Policy Associate, ACLU of the District of Columbia
33. Valerie Wexler, Organizer, Stop Police Terror Project D.C.
34. Alexander Levey, Public Witness
35. Matthew Broussard, Public Witness
36. Jordan Crunkleton, Lead Researcher, Stop and Frisk, D.C. Justice Lab
37. Caitlin Holbrook, Policy Advocate & Research Associate, D.C. Justice Lab
38. Robert Brannum, Commissioner, ANC 5E08
39. Yonah Bromberg Gaber, Public Witness
40. Lauren Sarkesian, Senior Policy Counsel, New America's Open Technology Institute
41. Virginia Spatz, Public Witness
42. Imara Croons, Public Witness
43. Frankie Armstrong, Public Witness
44. Karen Hylton-Brown, Public Witness
45. Zach Israel, Commissioner, ANC 4D04
46. Mara Verheyden-Hilliard, Co-Founder & Executive Director, Partnership for Civil Justice Fund

47. Keith Neely, Attorney, Institute for Justice
48. Chanel Cornett, Legal and Policy Officer, Fair Trials
49. Carlos Andino, Equal Justice Works Fellow, Washington Lawyers' Committee for Civil Rights and Urban Affairs
50. Ariel Levinson-Waldman, Founding President & Director-Counsel, Tzedek D.C.
51. Amber Rieke, Director of External Affairs, D.C. Health Matters Collaborative
52. Chris Hull, Senior Fellow, Americans for Intelligence Reform
53. Gordon Cummings, President, CantWait Foundation
54. Chuck Elkins, Commissioner, ANC 3D
55. Armand Cuevas, Public Witness
56. Olivia Blythe, Volunteer, D.C. Justice Lab
57. Nada Elbasha, Volunteer, D.C. Justice Lab
58. Elizabeth Harris, Volunteer, D.C. Justice Lab
59. Akosua Ali, President, NAACP DC Branch
60. Shayna Druckman, Public Witness
61. Kristin Eliason, Director of Legal & Strategic Advocacy, Network for Victim Recovery of DC
62. Yasmin Vafa, Executive Director, Rights4Girls
63. Rebecca Burney, Attorney and Youth Advocacy Coordinator, Rights4Girls
64. Diana Jarek, Housing Law Fellow, Bread for the City
65. Brittany K. Ruffin, Affordable Housing Advocacy Attorney, Washington Legal Clinic for the Homeless

ii. Government Witnesses

1. Chris Geldart, Acting Deputy Mayor for Public Safety & Justice
2. Michael Tobin, Executive Director, Office of Police Complaints
3. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia
4. Kathleen Patterson, D.C. Auditor, Office of the D.C. Auditor
5. Karl Racine, Attorney General, Office of the Attorney General

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE OF THE WHOLE
NOTICE OF JOINT PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

AND

**CHAIRMAN PHIL MENDELSON, CHAIRPERSON
COMMITTEE OF THE WHOLE**

**ANNOUNCE A JOINT PUBLIC HEARING ON
THE RECOMMENDATIONS OF THE D.C. POLICE REFORM COMMISSION**

**B24-0094, THE “BIAS IN THREAT ASSESSMENTS EVALUATION
AMENDMENT ACT OF 2021”**

**B24-0107, THE “METROPOLITAN POLICE DEPARTMENT REQUIREMENT OF
SUPERIOR OFFICER PRESENT AT UNOCCUPIED VEHICLE SEARCH – NO JUMP-
OUT SEARCHES ACT OF 2021”**

B24-0112, THE “WHITE SUPREMACY IN POLICING PREVENTION ACT OF 2021”

AND

**B24-0213, THE “LAW ENFORCEMENT VEHICULAR PURSUIT REFORM
ACT OF 2021”**

Thursday, May 20, 2021, 9:30 a.m. – 6:00 p.m.

Virtual Hearing via Zoom

To Watch Live:

<https://dccouncil.us/council-videos/>

<http://video.oct.dc.gov/DCC/jw.html>

<https://www.facebook.com/CMcharlesallen/>

On Thursday, May 20, 2021, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, and Chairman Phil Mendelson, Chairperson of the Committee of the Whole, will convene a joint public hearing to consider the Recommendations of the D.C. Police Reform Commission; Bill 24-0094, the “Bias in Threat Assessments Evaluation Amendment Act of 2021”; Bill 24-0107, the “Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021”; Bill 24-0112, the “White Supremacy in Policing Prevention Act of 2021”; and Bill 24-0213, the “Law Enforcement Vehicular Pursuit Reform Act of 2021”. The hearing will be conducted virtually via Zoom from 9:30 a.m. to 6:00 p.m.

The Council established the Police Reform Commission in the summer of 2020 through emergency legislation. The Council charged the Commission with “examin[ing] policing practices in the District and provi[ding] evidence-based recommendations for reforming and revisoning policing in the District”, and specifically, analyzing and making recommendations on sworn and special police officers in District schools, alternatives to police responses, police discipline, the integration of conflict resolution strategies and restorative justice practices into policing, and the provisions of the emergency legislation. The Commission’s members represent a variety of backgrounds, including government agencies, law enforcement, reentry services, labor organizations, educational institutions, criminal justice reform organizations, victim services, the faith community, mental and behavioral health care providers, business, and Advisory Neighborhood Commissions. On April 1, 2021, the Commission issued its final report, *Decentering Police to Improve Public Safety: A Report of the D.C. Police Reform Commission*, which offers dozens of recommendations. This joint hearing of the Committees will create an opportunity for public comment on the recommendations, which can be found at <https://dcpolicereform.com>.

The hearing will also include consideration of the legislation described below.

The stated purpose of B24-0094, the “Bias in Threat Assessments Evaluation Amendment Act of 2021”, is to amend the Attorney General of the District of Columbia Clarification and Elected Term Amendment Act of 2010 to require the Attorney General to conduct a study to determine whether the Metropolitan Police Department engaged in biased policing when they conducted threat assessments of assemblies within the District and to grant the Attorney General subpoena power as needed to carry out the study.

The stated purpose of B24-0107, the “Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021”, is to prohibit the Metropolitan Police Department from conducting searches of unoccupied vehicles unless a superior officer is present, all officers present at the search have their body cameras on and functioning, the officer requesting the search provides a verbally stated reason to the superior officer to conduct the search, and the superior officer present at the search is viewed giving verbal authorization to conduct the search, to require a report by an officer present at the search to file the results of the search and that the owner of the vehicle be notified as to why the owner’s vehicle was searched, and to provide that the owner of the vehicle has the right to sue the individual officers not adhering to the requirements of the act in their individual capacities.

The stated purpose of B24-0112, the “White Supremacy in Policing Prevention Act of 2021”, is to require the Office of the District of Columbia Auditor to initiate an assessment into any ties between white supremacist or other hate groups and members of the Metropolitan Police Department that suggest an individual cannot enforce the law fairly, and to recommend reforms to Metropolitan Police Department policy, practice, and personnel to better detect and prevent ties to white supremacist or other hate groups in the Department that may prevent fair enforcement of the law in order to increase public trust in the Department and improve officer and public safety.

The stated purpose of Bill 24-0213, the “Law Enforcement Vehicular Pursuit Reform Act of 2021”, is to prohibit District of Columbia law enforcement officers from engaging in vehicular pursuits of an individual operating a motor vehicle, unless the officer reasonably believes that the fleeing suspect has committed or has attempted to commit a crime of violence and that the pursuit is necessary to prevent an imminent death or serious bodily injury and is not likely to put others in danger of death or serious bodily injury; and to prohibit the use of dangerous vehicular pursuit practices.

The Committees invite the public to provide oral and written testimony. Public witnesses seeking to provide oral testimony at the Committees’ hearing must thoroughly review the following instructions:

- Anyone wishing to provide oral testimony must email the Committee on the Judiciary and Public Safety at judiciary@dccouncil.us with their name, telephone number, and organizational affiliation and title (if any), by the **close of business on Friday, May 14, 2021.**
- The Committees will approve witnesses’ registrations based on the total time allotted for public testimony. The Committees will also determine the order of witnesses’ testimony.
- Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals (and any subsequent representatives of the same organizations) will be allowed a maximum of three minutes.
- Witnesses are not permitted to yield their time to, or substitute their testimony for, the testimony of another individual or organization.
- If possible, witnesses should submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.
- Witnesses who anticipate needing language interpretation are requested to inform the Committee on the Judiciary and Public Safety as soon as possible, but no later than five business days before the hearing. The Committees will make every effort to fulfill timely requests; however, requests received fewer than five business days before the hearing may not be fulfilled.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be emailed to the Committee on the Judiciary and Public Safety at judiciary@dccouncil.us **no later than the close of business on Friday, May 28, 2021.**

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE OF THE WHOLE
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

AND

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AGENDA AND WITNESS LIST

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

- i. Public Witnesses

- Panel 1

- 1. Robert Bobb, Co-Chair, Police Reform Commission
 - 2. Christy Lopez, Co-Chair, Police Reform Commission
 - 3. Charles Brown, Public Witness
 - 4. Talib Atunde, Representative, Fred Hampton Gun Club
 - 5. Perry Redd, Executive Director, Sincere Seven
 - 6. Trupti Patel, Commissioner, ANC 2A03
 - 7. Mo Pasternak, Commissioner, ANC 2B04
 - 8. Danielle Robinette, Policy Attorney, D.C. Children's Law Center
 - 9. Eduardo Ferrer, Policy Director, Juvenile Justice Initiative, Georgetown Law/Visiting Professor of Law, Juvenile Justice Clinic
 - 10. Kaylah Alexander, Public Witness
 - 11. Karthik Balasubramanian, Public Witness
 - 12. Ron Thompson, Policy Officer, DC Transportation Equity Network
 - 13. Jeremiah Lowery, Advocacy Director, Washington Area Bicyclist Association

- Panel 2

- 14. Naïké Savain, Commissioner, Police Reform Commission
 - 15. Ronald Hampton, Commissioner, Police Reform Commission
 - 16. Josephine Ross, Public Witness
 - 17. Zina Charles, Public Witness
 - 18. Robin Nunn, Commissioner, ANC 2B03
 - 19. Alexandra Bailey, Commissioner, ANC 2F08
 - 20. Liz Odongo, Director of Grants and Programs, D.C. Coalition Against Domestic Violence
 - 21. Kylie Hogan, Director of Crisis Intervention Services, D.C. SAFE

22. Robert Pittman, Chair, 1D Citizens Advisory Council
23. Evan Douglas, Policy & Advocacy Fellow, D.C. Justice Lab
24. Patrice Sulton, Commissioner, Police Reform Commission
25. Rajan Sedalia, Public Witness
26. Emory Cole, Public Witness

Panel 3

27. Jeffrey Richardson, Commissioner, Police Reform Commission
28. Samantha Davis, Commissioner, Police Reform Commission
29. Bethany Young, Project Manager, Police Reform Commission
30. Madison Sampson, Consultant, Impact Justice
31. Alexander Levey, Public Witness
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34. Nassim Moshiree, Policy Director, ACLU of the District of Columbia
35. Natacia Knapper, Field Organizer, ACLU of the District of Columbia
36. Ahoefa Ananouko, Policy Associate, ACLU of the District of Columbia
37. Valerie Wexler, Organizer, Stop Police Terror Project D.C.

Panel 4

38. Emmanuel Caudillo, Public Witness
39. Matthew Broussard, Public Witness
40. Jordan Crunkleton, Lead Researcher, Stop and Frisk, D.C. Justice Lab
41. Caitlin Holbrook, Policy Advocate & Research Associate, D.C. Justice Lab
42. Robert Brannum, Commissioner, ANC 5E08
43. Anthony Lorenzo Green, Commissioner, ANC 7C04
44. Yonah Bromberg Gaber, Public Witness
45. Lauren Sarkesian, Senior Policy Counsel, New America's Open Technology Institute
46. Frankie Armstrong, Public Witness
47. Virginia Spatz, Public Witness
48. Imara Croons, Public Witness
49. Alida Austin, Public Witness

Panel 5

50. Mara Verheyden-Hilliard, Co-Founder & Executive Director, Partnership for Civil Justice Fund
51. Carl Messineo, Legal Director, Partnership for Civil Justice Fund
52. Keith Neely, Attorney, Institute for Justice
53. Chanel Cornett, Legal and Policy Officer, Fair Trials
54. Carlos Andino, Equal Justice Works Fellow, Washington Lawyers' Committee for Civil Rights and Urban Affairs
55. Ariel Levinson-Waldman, Founding President & Director-Counsel, Tzedek D.C.
56. Amber Rieke, Director of External Affairs, D.C. Health Matters Collaborative
57. Chris Hull, Senior Fellow, Americans for Intelligence Reform
58. Gordon Cummings, President, CantWait Foundation
59. Makia Green, Organizing Director - D.C., Working Families Party

ii. Government Witnesses

1. Chris Geldart, Acting Deputy Mayor for Public Safety & Justice
2. Michael Tobin, Executive Director, Office of Police Complaints
3. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

IV. ADJOURNMENT

Sincere Seven ◇ “Fighting For Justice & Equality In Our Workplace”



◇ 422 Marietta Place, NW, Suite L, Washington, DC 20011 ◇
 (202) 239-6565 ◇ (202) 717-7729 ◇ e-mail: sincereseven@hotmail.com
www.sincere7.org

“Let us not grow weary in well-doing, for in due season we shall reap, if we faint not.” Gal. 6:9

Written Testimony of Perry Redd, Executive Director, Sincere Seven

**Before the Judiciary & Public Safety & Committee of the Whole
 of the Council of the District of Columbia regarding**

B24-213, the “Law Enforcement Vehicular Pursuit Reform Act of 2021”

Thursday, May 20, 2021

9:30 am Virtual Meeting Platform

1350 Pennsylvania Avenue, NW, Washington, DC 20004

Good day members of the Judiciary and Public Safety Committee. Thank you for this opportunity to testify. I am Perry Redd, Executive Director of the 21-year old 501 (c)(3) worker advocacy organization Sincere Seven. I herein offer testimony on **Law Enforcement Vehicular Pursuit Reform Act of 2021** or what we deem, “**Karon’s Law.**”

I testify before this Committee from the perspective of a former ANC Commissioner, community organizer and advocate for the family of the late Karon Hylton Brown, who was unjustifiably hunted down and chased into a tragic death at the hands of members of our Metropolitan Police Department. I herein, will express, on behalf of our Brightwood community—the indigenous, transplants and gentrifiers—the need for you to vote this bill into law, alongside the shortcomings and continuum of remedies in the paradigm and wake of Karon’s murder.

Directly related to the incident of October 20, 2020, the officer directly responsible for Karon’s must be extricated from the MPD. It is a travesty that he’s still being paid from the tax dollars we commit to this District/state. My fellow Brightwoodians want him fired. Anything that prevents the Chief Executive, Mayor Bowser, from doing so is an affront to us. This bill needs amendments, including:

- **A community post-incident report**—within 30 days—of an incident to the sanctioned body (ANC) in the jurisdiction where a police-induced injury/conflict occurs...as Commissioner of ANC 4B05, such a report was committed to me through a letter of inquiry response from the commander of MPD’s 4th District on the Police-Citizen confrontation of May 19, 2019. A solid two years later, the MPD has failed to honor its word and deliver that report to our community. Council, do something!

- **An end to qualified immunity and break from the District's relationship with the Fraternal Order of Police**...the Black American's third worst enemy. The disposition of the officer is currently DC's best-kept secret. The family, members of our community—organized as well as the organized—still ask me, “what's going to happen with Sutton.” I call for his firing. He's collecting a salary—effectively, on vacation—a full six months after chasing a young man to his death. Help me understand what's right about that. Some courageous lawmakers in other jurisdictions, like Minneapolis—where I visited three weeks ago and met with organizers at the George Floyd memorial—have enacted a law to terminate first, with the ability to re-hire upon investigation and due process. Stop protecting dangerous people who possess policing authority...they do not make us safer.
- **Name the Officer Amendment**—the sordid history of this country's pride in “perp-walking” suspects—especially Black males—is in need of an equity balance. When clear and present evidence is offered in an incident such as this, our civil servants cannot remain nameless, faceless entities that cause wanton harm to our residents. So it is said, “If it's good for the goose, it's good for the gander.” MPD has no problem with naming arrestees who have yet to partake of constitutional due process; no one is above the law—unless YOU elevate them to that position!
- **Support for Karon's partners** who still frequent the same space from which Karon was nurtured. The MPD presence there is reminiscent of a snapshot of the Israeli occupation of Palestine. You ought to be ashamed, but you're not. In lieu of tax breaks for corporate employers in the District, mandate hiring opportunities, not sorry-assed job training. Those young men are ripe for corrupted growth, absent opportunities of life-saving, well-paying career opportunities.
- Sadly, police chases often don't end well. We must have a mandate in the law to **render life-saving treatment to victims of a police chase or interaction**. That did not happen in Karon's case. Watching the video, Officer Sutton and his partners did go through Karon's pockets (what were they looking for?) but couldn't entertain the possibility of preserving the life they'd crashed? Jurisdictions have passed this provision into law. It is doable...do it!
- No more hiding and concealing video evidence...we must mandate **bodycams turned on—no off switch**—with redacting saved for later. In my 2020 Ward 4 Council campaign against the Honorable Councilmember Lewis-George, I proposed a bodycam system with a dual-output video streams—one feed to the District station, the other into a sealed database in another branch of government, the Superior Court. The video footage in the Court system, would only be released upon court order, if necessary. By the way, I strongly suggest that there is more audio/video evidence that you have not called for in the death of Karon Hylton-Brown...why haven't you gotten it?
- Petition the US Attorney General Merrick Garland to add the District's MPD to his list of pattern or practice jurisdictions along with Minneapolis and Louisville given MPD's clear problematic histories, practices, and/or settlements. The need to assess any/all types of force used by MPD officers, including use of force on individuals with behavioral health disabilities or individuals engaged in activities protected by the First Amendment. We need an uncovering of the officers who've engaged in discriminatory policing, and also whether MPD conducts unreasonable stops, searches, seizures, and arrests, both during patrol activities and in obtaining and executing search warrants for private homes. S7 calls for the DOJ investigation to

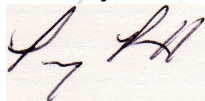
include a comprehensive review of MPD policies, training, and supervision, as well as MPD's systems of accountability, including misconduct complaint intake, investigation, review, disposition, and discipline. That would aid the Hylton-Brown family—and many other DC families—get the answers they so rightly deserve

In my heartfelt effort and duty to get answers, access and serve Karon's family, I encountered numerous roadblocks and non-transparency, which on its face, erodes confidence in our elected and appointed leaders. What I know—and for the past six years, have repeatedly petitioned that DC residents need formalized and recognized advocacy from outside the government. There **MUST** be legislation formalizing the role of the advocate—across ALL agencies. Some residents are intimidated and/ or cannot navigate the channels to address their concerns with this government. Help us, help you, help them. Recognize the community advocate with an amendment.

In closing, a sincere thank you to our new Councilmember Lewis-George for stepping up, stepping out, hearing our constituents and taking concerted action to respond and substantively address a clear and evident wrong.

Thank you for allowing me to testify in this Committee legislative hearing.

Sincerely,



Perry Redd
Executive Director



TESTIMONY REGARDING POLICE REFORM COMMISSION REPORT

Commissioner Trupti J. Patel, ANC 2A03

May 20, 2021

Good Morning Chairperson Allen and fellow Council Members. My name is Trupti Pateli. I am DC's first Indian-American woman ANC Commissioner. I represent the Historic Foggy Bottom and I'm testifying in solidarity and as an ally to the African American community.

I weigh the great responsibility of trying to be eloquent, articulate and succinct on an issue that is intensely emotional and deeply personal for myself and others.

I'm one of the As one of the 16,000 pieces of testimony submitted last year around the police.

Last night I sponsored a resolution before ANC 2A around the actionable recommendations written in the DC Police Reform Commission report. It passed unanimously.

The Commission with full transparency outlines the racist beginnings and legacy of policing in this country. It acknowledges the role that law enforcement has in upholding systemic racism and this entity does not evoke feelings of safety for our most vulnerable communities but instead of fear.

We've become a society that has become overly reliant on the police and expecting them to solve problems and provide solutions they are not equipped for.

Poverty is now being criminalized--when did we become punishers instead of problem solvers?

As a brown woman I have anxiety when I see a police officer-the reality is that I'm perceived as a threat i.e. a terrorist and am approached from a vantage point of being a danger.

In my very own commission I was made to feel unwanted and unwelcome when law enforcement arrived-at least 12 officers responded to a peaceful action I was conducting around economic and wage justice. Low-wage shift workers who are mainly

from communities of color were terrified for my safety as well as their own. That interaction could have gone in many different directions. I won't lie, I flashed my ANC credentials, while the officers on site were polite and professional-it disturbed me to think what if I didn't say who I was--how would that have gone?

The anger, hurt, and trauma we experienced from such a "response" to "us" being there compelled me to send a note to Chief Contee about it.

I appreciate Chief Contee taking me seriously-and I have faith and confidence that he can make MPD serve the city as it should.

I TASK YOU ALL TO DO BETTER-The roadmap provided by the commission is a starting point-it will not be a quick easy fix-but it's worth it to have a properly functioning police force that serves the community properly.

The following specific recommendations from the commission I'd like to see implemented while not exhaustive is as follows:

1. End no knock warrants
2. No purchase of military weapons
3. End use of deadly force
4. Ability to FOIA officers
5. Create Deputy Auditor position
6. End qualified immunity

The murder of countless Black and Brown individuals at the hands of law enforcement can no longer be tolerated and accepted.

We are all someone's beloved child, partner, parent, and sibling---no amount of money or apologies can bring someone back once they've died.

If one survives the traumatic encounters with the police, they leave individuals with PTSD.

No parent should have to pray and be anxious when their child leaves them to go out, no parent should have to train their child to deal with law enforcement so they don't get murdered.

I'm tired, but African-Americans are exhausted. They've been the whipping boy for 400 years.

My family immigrated to this country to escape casteism but they would discover the ugly underbelly in America known as racism. I'm able to stand before you today and testify due to individuals like John Lewis, Martin Luther King, and countless others.

Immigrants like myself owe a debt to the African American community-it's time to pay up and I'm gladly paying it by standing in solidarity and amplifying the fierce sense of urgency in shifting what policing means in D.C.

In Service & Solidarity



Testimony Before the District of Columbia Council
Committee on Judiciary and Public Safety
&
Committee of the Whole
May 20, 2021

Joint Public Hearing:
The Recommendations of the Police Reform Commission

Danielle Robinette
Policy Attorney
Children's Law Center

Introduction

Thank you, Councilmember Allen, Chairman Mendelson and members of the Committees, for the opportunity to testify. My name is Danielle Robinette. I am a policy attorney at Children's Law Center and a resident of Ward 6. Additionally, prior to law school, I was a public-school teacher. I am testifying today on behalf of the Children's Law Center which fights so every DC child can grow up with a loving family, good health and a quality education.¹ With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

I appreciate this opportunity to testify regarding the recommendations of the Police Reform Commission (PRC). In December 2020, CLC joined the Every Student Every Day Coalition and a number of other youth advocacy organizations in submitting recommendations to the PRC. We were encouraged to see that the PRC included these recommendations into their final report.² These recommendations are consistent with neuroscience which tells us that adolescents are more likely than adults to be impulsive and sensation-seeking, to make decisions based on “immediate” gains rather than “long-term consequences, and to be susceptible to peer pressure.”³

Over the past year, on top of a global pandemic, Black and brown young people have seen time and time again that they cannot trust the police to keep them safe. Through social media and the news, they face constant reminders that they are likely to

be treated worse by law enforcement than their white peers. These incidents of police brutality cause racial stress for all Black and brown people. We believe that now is the time to reimagine what a safe and positive school environment looks like. We need to move away from the utilization of police in schools and towards a school environment that supports students. We offer our recommendations on how to make this transition. Additionally, we believe that the involvement of youth voices, educators, parents, administrators, and school staff is fundamental to ensuring an effective transition to police-free schools.

Our testimony and recommendations are largely the same as those we submitted to the Committee on Judiciary and Public Safety for their performance oversight hearing for the Metropolitan Police Department (MPD) and to the Committee of the Whole for their roundtable on school security. We are repeating them here for the record to uplift the PRC's recommendations about police-free schools.

Our testimony today outlines on a two-part strategy which calls for the divestment of local dollars from the MPD School Safety Division and the investment of those dollars into programs that create and reinforce safety in our schools. Our divestment position is drawn from the often-harmful interactions our young clients have had with police in schools. Our investment recommendations highlight programs and partnerships which are already in existence and currently operate to varying degrees within our schools and communities. Our recommendations offer concrete alternatives to police in schools and

support a new vision of school safety that does not contribute to the criminalization of Black and Brown students, but instead enhances their educational experience in DC's public schools.

Beyond the police, the role of civilian security at the schools must be examined. The reimagining of school security must involve community input and reflect the needs of education stakeholders. While there has been a lot of focus on the DCPS security contract, DCPS represents only half of the District's public-school students. Conversations about reimagining security and investments in positive school cultures must not forget the 60+ charter LEAs that educate more than 40,000 children and young people in DC – nearly 75% of whom are Black⁴ and 49% of whom live in Wards 7 and 8.⁵ While our testimony today does not directly address the topic of contracted security guards in DC's public schools, we encourage the Committees to continue this dialogue with respect to all aspects of school security. We believe that school security, in whatever form it ultimately takes, must be trauma-informed and designed to integrate safety into a broader conceptualization of positive school climates and culture.

A. Divesting from MPD's School Safety Division

We believe that schools should be a safe space where students can learn and grow in a trauma-informed environment that supports their educational and socio-emotional learning goals. According to MPD's annual school safety report, the goal of the School Safety Division is "to support a safe learning environment for all students."⁶

Unfortunately, these goals are undercut when students experience negative, even traumatizing, interactions with MPD officers, School Resource Officers (SROs), and contracted security guards during the school day. These are just a few examples of the types of problematic interactions with police at school that our young Black and Brown clients have shared with us:

- An 11-year-old client who refused to get on the school bus and the response was for the DCPS school to call the police.
- A five-year-old client visited by a uniformed MPD officer, not a social worker, and taken away alone to be interviewed about abuse allegations.
- A fifth-grade student who left the school building but remained on campus. The elementary school called MPD who responded by escalating the situation to the point of putting the child into restraints.

Police are too often called when students are having behavioral difficulties. Children often have behavioral outbursts because of trauma they are experiencing outside of school and struggles that they face in school. Children who have become emotionally dysregulated should be helped – not arrested. The response from adults should be to ask, “Why is this child acting out and how can we address the underlying concern?” – rather than to call the police.

Black and Brown children are disproportionately affected by this practice. Students with disabilities are also dramatically affected. National trends show that students with disabilities are nearly three times more likely to be arrested than their general education peers.⁷ When disability and race intersect the impact is compounded. SRO interactions with students with disabilities can be especially problematic. Because

SROs are not school employees, they do not have access to a student's Individualized Education Plan (IEP) and/or Behavior Intervention Plan (BIP). This leads to police officers responding to a behavioral health crisis with little or no information about the child's special needs, triggers, or preferred de-escalation strategies.

Our clients with disabilities have shared stories that illustrate the devastating consequences of what happens when police are called during an episode of emotional or behavioral dysregulation:

- A nine-year-old client who was experiencing a mental health emergency was handcuffed and accompanied by uniformed officers to the Emergency Department
- A 12-year-old client was threatened by staff at their group home that the police would be called when he was having a mental health crisis.
- An 11-year-old student was handcuffed at a DCPS school for running through the halls and then was transported by an SRO in handcuffs to Children's National Hospital for a psychiatric evaluation when a parent could not be reached.

In addition to these sorts of specific incidents with police in schools, many children in DC have negative reactions to police based on their experiences in the community. Many have witnessed friends and family being arrested or hassled by police. For some students, the mere presence of police officers at school can be enough to trigger fear and past trauma. For example, a Children's Law Center lawyer witnessed a child client withdraw and recoil into their sweatshirt after walking into a room at school with police present even though the police officers were not interacting directly with the client. For many students the regular presence of police in schools does not create a safe and secure

learning environment. In fact, due to their negative and traumatic experiences in their communities, the presence of police in schools creates an environment of fear and hostility for many students.

The cumulative effect of these school and community interactions, repeatedly highlighted by videos of police violence circulated on social media, is a sort of race-based traumatic stress⁸ that has no place in a public school. By redirecting local dollar allocations away from MPD's School Safety Division and shifting those funds to critical programs like school-based mental health, we have an opportunity to create an environment where students are supported and not criminalized.

B. Invest Local Dollars to Create Safe Schools

In order for the transition toward police-free schools to be successful, the divestment from MPD's School Safety Division must be paired with investments in programming and supports that will improve school climates and create safe schools without a need for police. The below recommendations are based upon our experiences with and observations of programs that have been implemented to varying degrees in some schools across the District. Our recommendations include expansions of programs to support student behavioral health, alternative discipline practices, and professional development for teachers and other school staff. Additionally, we recommend that community-based programs with established and trusted relationships with young

people be brought into the school setting. These recommendations are consistent with those put forth by the Police Reform Commission in their final report.⁹

Increase investments in our School-Based Behavioral Health (SBBH) Program

The District's SBBH program provides children, youth, and their families with access to high-quality services that promote mental wellness and generate a positive school culture. Local community-based mental health providers partner with schools based on the school's individualized needs. As the SBBH project is implemented at each campus, students are able to access three distinct service tiers: mental health promotion and prevention for all students (Tier 1), focused interventions for students at-risk of developing a mental health problem (Tier 2), and intensive treatment for individual students who already have a mental health problem (Tier 3). The multi-tiered approach is intended to facilitate the effective and efficient use of the District's resources in the service of providing appropriate and reliable school-based behavioral health services to children and youth. This, in turn, makes it easier for students to access key mental health supports and also ensures that teachers and staff benefit from having clinicians available.

The SBBH program is currently in its expansion phase and will need additional local-dollar support in order for expansion to reach all schools in the District. There are several roles at each school to support the integration and expansion of the SBBH program, including the School Behavioral Health Coordinator, Community-Based Organization (CBO) clinician, Department of Behavioral Health (DBH) clinical specialist,

and DBH Clinical Supervisor. With these resources in place, schools have been able to complete the School Strengthening Tool and Work Plan, which are used by each school's administrative or behavioral health team to identify the specific behavioral health needs of each school and create a comprehensive and integrated plan for meeting those needs. At the community level, the DC Community of Practice (CoP) was established to facilitate strategic collaboration between school personnel, community leaders, and CBO clinicians. These various infrastructure components, along with robust interagency communication and coordination, are critical to the continued efficacy and functionality of the District's SBBH program.

Additional investments to the SBBH program in FY21-22 would allow DBH to expand the program to include the 80+ DCPS and public charter schools that are still waiting on vital behavioral health resources. We recommend increasing investments in the SBBH program in order to expand its reach to all public schools in DC.

Provide teachers and staff with trauma-informed training, professional development, and supports

Nationally, roughly one in five children have experienced adverse childhood experiences and traumatic experiences.¹⁰ These traumatic experiences can range from food insecurity, neglect and abuse, and even chronic toxic stress. Trauma may manifest itself in students as absenteeism, performing below grade level in reading and math, and behavior problems.¹¹ Students experiencing these forms of complex trauma can benefit

from teachers and school staff who not only have been trained not only to recognize the signs of trauma in children and youth, but also who are also able to access trauma-informed training, professional development, and supports to assist these students.¹² We recommend that local dollars be allocated in the upcoming budget in order to provide these trainings and professional development opportunities for teachers and staff in our school community.

Expand restorative justice programming in schools and communities

The District has invested in the concept of restorative justice programming for children and youth and has supported its use within the community. Currently, SchoolTalk DC has provided restorative justice supports to both DCPS and DC public charter schools.¹³ These supports range from individual training sessions for students and staff, facilitation of important restorative conversations, restorative justice conferencing, classroom circles, and dialogue circles.¹⁴ We recommend that the District continue to invest in restorative justice programming for children and youth in schools and communities.

Invest in school-based violence interrupter programming and training and expand community-based violence interrupters

We recommend that the District continue to invest in and expand violence interrupter programs. Currently, the District is supporting violence interrupter programs through the Office of the Attorney General and the Office of Neighborhood Safety and

Engagement. The model takes a public health approach in addressing community violence by interrupting violence, identifying and treating those at highest risk for committing violent crimes, and changing community ideas around the normalization of violence.¹⁵ In order to continue to build on a culture of school safety, we recommend that the District bring this model into the school community and provide students the opportunity to interact with violence interrupters and engage in training provided to violence interrupters.

Explore funding the expansion of credible messengers in communities and schools

We recommend that the District explore the expansion of credible messengers into communities and schools broadly. The Credible Messenger Initiative is a program for youth committed to the Department of Youth Rehabilitation Services (DYRS) that blends individual mentorship programming with restorative justice processes.¹⁶ This program helps to connect young people with members of the community who share similar experiences (like being court-involved), are skilled in mentorship and community building, and demonstrate integrity and transformation. Expansion of this program would ensure that all students, beyond those who are involved with DYRS, would be able to access the benefits of the program, which include:

- Promoting family and community engagement
- Connecting young people to caring adults in their communities
- Enhancing city-wide violence intervention services
- Improving services to youth in the community
- Connecting youth to resources and relationships

In addition, expansion of this program would create job opportunities for DC residents who already serve as community leaders and could serve as credible messengers in schools.

Ensure adequate investments in socio-emotional learning curriculum and implementation

We recommend that the District remain committed to adequately funding a socio-emotional learning curriculum for students across all grade levels. Socio-emotional learning is the process through which children and adults understand and manage emotions, set and achieve positive goals, feel and show empathy for others, maintain positive relationships, and make responsible decisions.¹⁷ DCPS is already implementing and integrating a socio-emotional learning curriculum with supports from the Collaborative for Academic, Social and Emotional Learning. We recommend that the District continue to fund socio-emotional learning in FY21.

Ensure fidelity in Positive Behavioral Intervention and Supports (PBIS) programs at schools

PBIS programs are evidence-based strategies that help to improve individual student classroom behavior and create safe schools by focusing on preventing problem behaviors rather than punishing students.¹⁸ Studies have shown that schools that implement school-wide PBIS programs show a decrease in the number of suspensions, improved perceptions of safety, and improvements in academic performance.¹⁹ In order to implement PBIS programs with fidelity, schools will need additional financial

resources to be sure that these programs are being properly implemented and evaluated. We recommend that local dollars be set aside for implementing PBIS programs in both DCPS and charter schools.

Adequately fund behavioral intervention support staff, administrative staff, and behavioral support technicians at each school

Many of the functions of security personnel could be replicated by existing and newly hired school staff if the District were to adequately fund behavioral intervention support staff, administrative staff, and behavioral support technicians at each school. We envision administrative staff being available to assist with checking-in parents, reviewing paperwork, and helping the registrar with attendance issues. Behavioral intervention support staff and behavioral support technicians can be key partners in ensuring school safety by using their training to assist classroom teachers and administrators with any behavioral issues before they escalate.

C. Models from Other Jurisdictions

The moment we are in calls for transformative, bold investments in students' and educators' behavioral health. Black and brown youth and educators have been especially traumatized as they are grappling with two pandemics: the coronavirus and the systemic racism that has been dramatically highlighted this past year. DC is not the only jurisdiction working to address these dual crises. Across the country, we have seen states, cities, and school districts pursue alternatives to law enforcement in schools. Earlier this

month, the Alexandria City Council voted to reallocate nearly \$800,000 away from the SRO program and invest those funds in student mental health resources.²⁰

We acknowledge that there are limitations in examining any plans that arose in response to the calls for racial justice following the murder of George Floyd in Summer 2020. Because so few students have returned to classrooms in-person, many of the newest police-free schools plans have not yet been implemented. However, a number of districts began removing SROs from schools before the activism we have seen over the last year. Below we examine those districts that removed police from schools prior to the COVID-19 pandemic. While no one model will work for every school district, we believe that there are lessons to be learned from those who have been doing this work in recent years. We encourage the Council to collaborate with all education stakeholders – especially parents and students – to decide which approach will be best for DC.

Minneapolis, MN

In 2017, Intermediate School District 287 (ISD 287) in Minneapolis, Minnesota replaced SROs with Student Safety Coaches. These Student Safety Coaches specialize in mental health, de-escalation, restorative justice and safe physical interventions.²¹ Their primary focus is to build trusting relationships with students to ward off and mitigate behavior issues. Early evaluations of this model are largely positive. In the period between program implementation in 2017 and the pandemic-related transition to distance learning, ISD 287 saw “positive culture and safety on the rise, stronger

relationships, incidents with police involvement decreased by half over two years, significantly fewer arrests, and [limited] use of physical holds.”²²

Elsewhere in city, the school board Minneapolis Public School District unanimously voted to terminate its contract with police in June 2020. As an alternative, the district hired 11 “public safety support specialists” who are intended to act as a bridge between in-school intervention and law enforcement. The specialists will serve a security function but be trained to build relationships with students and de-escalate conflicts. Notably, this plan has faced criticism from activists stemming from reports that 14 of the 24 finalists for these positions have a background in law enforcement.²³ CLC strongly encourages the DC Council to be wary of proposed alternatives that simply create SROs by some other name.

Los Angeles, CA

The trustee of the Los Angeles Unified School District (LSUSD) recently approved a plan to cut 133 police positions from their schools. This reduction in force would remove 70 sworn officers with arrest powers, 62 nonsworn officers, and one support staff member.²⁴ Notably, this leaves in place 211 officers who will continue to monitor school and be available for emergencies. This reduction in police presence is paired with the implementation of School Climate Coaches who are individuals drawn from the community who are responsible for mentoring students, using socio-emotional learning strategies to strengthen student engagement, applying effective de-escalation strategies

to support conflict resolution, building positive relationships, eliminating racial disproportionality in school discipline practices, and understanding and addressing implicit bias.²⁵

Furthermore, the reduction in school police officers frees up \$25 million in the district's budget. This money has been redirected to fund, in part, a \$36.5 million Black Student Achievement Program that aims to provide supplemental services to 53 high schools with a high proportion of Black students and high need indicators (below-average test scores and above-average suspension rates). The Black Student Achieve Program aims to:²⁶

- Ensure that materials and instruction are culturally responsive to Black students and provide additional support and intervention to students to close literacy and numeracy skill gaps;
- Work with community groups that have demonstrated success with Black students and families; and
- Reduce the over-identification of Black students in suspensions, discipline and other measures through targeted intervention to address students' academic and social-emotional needs.

This model is the most similar to the two-prong divest-invest strategy that we outlined above. This removal of police reduces the harms that students suffer, and the investment in student supports will help repair the damage that has already been done.

Maryland

Beyond the district-level changes that have been described above, there are also two pieces of legislation under consideration by the Maryland General Assembly – the

Police Free Schools Act (PFSA)²⁷ and the Counselors Not Cops Act (CNCA).²⁸ Combined, these bills are designed to remove police from schools and redirect funding for mental health services, wraparound supports, and restorative approaches.

Specifically, these bills:

- Prohibit school districts from contracting with police departments;
- Repeal the creation of the Baltimore City Public Schools standalone police force;
- Require reporting on the use of force by school security and on calls to City or County police for incidents in school;
- Include families impacted by school-based arrest and experts in student mental health and conflict resolution to the School Safety Subcabinet Advisory Board; and
- Redirect the \$10 million/year SRO fund to schools to be used only to (i) hire mental and behavioral health specialists, (ii) hire restorative approaches coordinators and expand restorative approaches in schools, (iii) hire community school coordinators, develop community schools, and provide wraparound services, and (iv) develop trauma-informed schools.

Importantly, these bills do NOT:

- Prohibit school districts from calling City or County police in an emergency;
- Prohibit school districts from developing “adequate law enforcement coverage” plans with City or County police;
- Remove school security guards who are unarmed and do not have the power to arrest students; and
- Prevent schools from installing door locks or other non-personnel safety measures.

The legislators leading the charge on these bills have specifically sought to dispel the fears of parents and other stakeholders regarding the purported benefits of SROs – namely that schools without cops will not be safe. Specifically, they argued that “SROs have not deterred or stopped school shootings. Active shooters do not avoid schools with armed

police, and it is extremely rare for police to successfully intervene when shootings occur. Police presence in schools hasn't reduced any other school-based violence. A study of approximately 3,000 schools nationwide found 'no evidence suggesting that SRO or other sworn law-enforcement contribute to school safety.'"²⁹

D. Youth Policing Beyond the School Safety Division

Beyond our recommendations regarding the School Safety Division and SROs, we are also concerned by the ways in which MPD practices affect youth differently than adults and can contribute to school avoidance. To this end, we would like to uplift recommendations included in the Police Reform Commission's (PRC) report regarding developmentally appropriate policing.³⁰ Moreover, we believe this position is consistent with the District's sanctuary values that have historically protected students from enforcement actions by Immigration and Customs Enforcement on school grounds.³¹ DC schools must be a sanctuary for students. To that end, in addition to the elimination of the School Safety Division,³² DC should: 1) discontinue the practice of serving warrants on school grounds; 2) prohibit the arrest of youth in schools for non-school based offenses or custody orders; 3) prohibit the interviewing or interrogation of youth in schools; 4) prohibit youth and adults from carrying firearms in schools;³³ and 5) implement non-law-enforcement-driven crisis response and expand safe passage systems.

Conclusion

Thank you for this opportunity to testify, and I welcome any questions.

¹ Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With almost 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And we multiply this impact by advocating for city-wide solutions that benefit all children.

² *Id.*

³ See *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011); see also Steinberg, Laurence, et. al., *Are Adolescents Less Mature than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop”*, 64 AM. PSYCHOL. 583, 592 (2009). Available at: [https://pubmed.ncbi.nlm.nih.gov/19824745/#:~:text=Simmons%20\(2005\)%2C%20which%20abolished,are%20as%20mature%20as%20adults.](https://pubmed.ncbi.nlm.nih.gov/19824745/#:~:text=Simmons%20(2005)%2C%20which%20abolished,are%20as%20mature%20as%20adults.)

⁴ DC Public Charter School Board, “School Enrollment: PCS Demographics,” available at: <https://dcpcsb.org/student-enrollment> (reporting that, in SY18-19, 73.66% of students enrolled in public charter schools identified as Black or African American).

⁵ *Id.*, at “Enrollment by Ward Where Students Live” (reporting that, in SY18-19, 22% of charter students lived in Ward 7 and 27% percent lived in Ward 8.)

⁶ Metropolitan Police Department, *School Safety and Security in the District of Columbia: SY 2019-2020*, 1, available at: <https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20School%20Safety%20Annual%20Report%20School%20Year%202019-2020%20Final.pdf>.

⁷ See ACLU, *Cops and No Counselors, How the Lack of School Mental Health Staff is Harming Students*, 5, available at: <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>.

⁸ See Kristin N. Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 57 American Univ. L. Rev. 1513, 1561, n. 313 (2018). Available at: <http://www.aulawreview.org/au-law-review/wp-content/uploads/2018/08/675-%E2%80%9302-Henning.pdf>.

⁹ District of Columbia Police Reform Commission, *Decentering Police to Improve Public Safety*, at 69, (Apr. 1, 2021), available at: <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>

¹⁰ Sparks, S.D., *Some FAQs for Educators on Children’s Trauma*. Education Week, (Aug. 9, 2019), available at: <https://www.edweek.org/ew/articles/2019/08/21/some-faqs-for-educators-on-childrens-trauma.html>.

¹¹ Blodgett, Christopher, and Jane D. Lanigan, *The association between adverse child experience (ACE) and school success in elementary school children*, Sch Psychol Q., doi: 10.1037/spq0000256, 37-146, (March 2018). Available at: <https://pubmed.ncbi.nlm.nih.gov/29629790/>.

¹² There are many robust reports and training materials available to support teachers and staff. For a non-exhaustive list, please visit: Trauma Sensitive Schools, *Helping Traumatized Children Learn*, available at: <https://traumasensitiveschools.org/reports-and-resources/>.

¹³ See SchoolTalk, *Restorative DC*, available at: <https://www.schooltalkdc.org/restoratedc1/>.

¹⁴ See RestorativeDC, *Restorative Practices*, available at: <http://www.restoratedc.org/restorativepractices/>.

¹⁵ Office of the Attorney General for the District of Columbia, *Investing in OAG’s Violence Interrupter Program* (Feb. 7, 2019), available at: <https://oag.dc.gov/blog/investing-oags-violence-interruption-program>.

¹⁶ Department of Youth Rehabilitation Services, *Credible Messenger Initiative*, available at: <https://dyrs.dc.gov/page/credible-messenger-initiative>.

¹⁷ The definition of socio-emotional learning can be found at <https://casel.org/what-is-sel/>.

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- ¹⁸ Lee, Andrew J., *PBIS: What You Need to Know*, Understood.org, available at: <https://www.understood.org/en/learning-thinking-differences/treatments-approaches/educational-strategies/pbis-how-schools-support-positive-behavior>.
- ¹⁹ See Bradshaw, Catherine P., et. al., *Examining the Effects of Schoolwide Positive Behavioral interventions and Supports on Student Outcomes: Results From a Randomized Controlled Effectiveness Trial in Elementary School*, *Journal of Positive Behavior Interventions*, (April 2009). Available at: <https://journals.sagepub.com/doi/10.1177/1098300709334798>; Horner, Robert H., and George Sugai, *Defining and Describing Schoolwide Positive Behavioral Support*, *Handbook of Positive Behavioral Support*, (2009). Available at: https://link.springer.com/chapter/10.1007/978-0-387-09632-2_13; and Nelson, J. Ron, et. al., *Maximizing student learning: The effects of a comprehensive school-based program for preventing problem behaviors*. *Journal of Emotional and Behavioral Disorders*, *Journal of Emotional and Behavioral Disorders*, 136–148, (July 1, 2002). Available at: <https://doi.org/10.1177/10634266020100030201>.
- ²⁰ See Hannah Natanson, *Alexandria will remove police from public school hallways*, *Washington Post*, (May 16, 2021), available at: https://www.washingtonpost.com/local/education/alexandria-police-middle-high-school/2021/05/15/55308846-b3fb-11eb-9059-d8176b9e3798_story.html
- ²¹ Hicks, Rachel, *287 Student Safety Coach Model*, *Intermediate District 287*, (July 10, 2020), available at: <https://www.district287.org/287-student-safety-coach-model/>.
- ²² *Id.*, at Wilder Research Report and Data.
- ²³ See Keierleber, Mark, *Here are the People Minneapolis Schools Hired to Replace Campus Police After George Floyd's Death – And Why Some Are Raising New Red Flags*, *The74*, (Nov. 9, 2020), available: <https://www.the74million.org/article/here-are-the-people-minneapolis-schools-hired-to-replace-campus-police-after-george-floyds-death-and-why-some-are-raising-new-red-flags/>.
- ²⁴ See Cowan, Jill, et. al., *Protestors Urged Defunding the Police. Schools in Big Cities Are Doing It.*, *New York Times*, (February 18, 2021), available at: <https://www.nytimes.com/2021/02/17/us/los-angeles-school-police.html>.
- ²⁵ *Id.*
- ²⁶ Board of Education of the City of Los Angeles, *Minutes from Special Meeting Order of Business*, (Feb. 16, 2021), available at: <http://laschoolboard.org/sites/default/files/02-16-21SpclBdOBWithMaterialsColor.pdf>.
- ²⁷ Police Free Schools bills in Maryland have not been formally introduced but on the way. See McCord, Joel, *Bills Aim to Get Cops Out of Schools*, *WYPR*, (Feb. 3, 2021), available at: <https://www.wypr.org/post/bills-aim-get-cops-out-schools>.
- ²⁸ *Primary and Secondary Education – Mental Health Services – Expansion (Counselors Not Cops Act)*, House Bill 496, (January 15, 2021), available at: <http://mgaleg.maryland.gov/2021RS/bills/hb/hb0496f.pdf>.
- ²⁹ Acevero, Gabriel, and Jheanelle Wilkins, *Reimagining school safety in Maryland*, *Washington Post*, (Jan. 29, 2021) available at: https://www.washingtonpost.com/opinions/local-opinions/reimagining-school-safety-in-maryland/2021/01/28/6de4299a-5b38-11eb-8bcf-3877871c819d_story.html (quoting Na, Chongmin, and Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 *Justice Quarterly* 619 (2013)). Available at: <https://www.tandfonline.com/doi/full/10.1080/07418825.2011.615754>).
- ³⁰ See *Decentering Police to Improve Public Safety*, *supra* note 9 at 128.
- ³¹ See, e.g., Office of Attorney General, *A Message from the Attorney General*, (May 11, 2017), available at: <https://oag.dc.gov/sites/default/files/2018-02/Guidance-for-Schools-Re-Immigration-Concerns-English.pdf>.
- ³² Currently, the District spends at least \$14 million on MPD's School Security Division. This division should be eliminated, and the money saved should be reinvested directly in youth and family in a manner consistent with the recommendations proposed in Part D *infra*.

³³ Specifically, officers of all types should disarm prior to stepping foot on a school campus unless they are specifically responding to the *very rare* report of a shooting or armed individual on campus. See Ropeik, David, *School Shootings are Extraordinarily Rare. Why is Fear of Them Driving Policy?*, Washington Post, (March 8, 2018), *available at*: https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-ebf9d112159c_story.html (finding that the statistical likelihood of any given public-school student being killed by a gun, in school, on any given day since 1999 was roughly 1 in 614,000,000).



Judiciary & Public Safety & Committee of the Whole Public Hearing on The Recommendations of the D.C. Police Reform Commission

Thank you for the opportunity to testify today. My name is Jeremiah Lowery, and I am the Advocacy Director at the Washington Area Bicyclist Association (WABA). I am submitting testimony on behalf of Defund MPD Coalition's Police out of Traffic Enforcement working group.

I would like to first and foremost state the main point of my testimony: The Police have not been and will continue to not be the solution to traffic safety.

As the policy director at WABA, part of my job is to examine best practices to ensure everyone in the region has an opportunity to safely commute. From our perspective the best way to ensure walkers, bikers, and bus riders have safe commutes is to fund safe infrastructure to change driver behavior, and to educate drivers on safety rules and regulations. The police are not a sustainable solution.

Therefore, we agree with the police reform recommendations to remove MPD's traffic enforcement duties. Our Defund MPD working group of lawyers, research fellows, and advocates have combed through the DC Code and the DC MR. Based on this research, we propose the following changes:

Specifically, we would like to highlight the following MPD responsibilities that should be moved to DDOT or DPW (with a strong emphasis on ensuring DDOT or DPW staff are properly trained and resourced):

- Make secondary only (can't pull over for it, but can ticket if there's a basis for a stop)
 - *Operating Unregistered (18 DCMR § 411.1)*
 - Operating a vehicle without proper registration may be a secondary violation but cannot be used as the primary grounds for initiating a traffic stop.
 - *Light Violations (18 DCMR §§ 703-706)*

- Violation of proper headlight (§ 704), taillight (§ 705), turn signal (§ 706), or other lighting equipment (§ 703) shall not be justification to initiate a traffic stop.
- Failure to Wear Protective Equipment While Riding (18 DCMR §§ 2215.3, 2215.4)
- Failure to Wear a Seatbelt (D.C. Code § 1802)
 - Failure to comply with District seatbelt laws shall be enforced by an alternative government agency.
- Amend (narrow to dangerous driving)
 - Littering (18 DCMR § 2221.6)
 - Littering should only be a primary infraction justifying a traffic stop if the driver throws something out of the vehicle which will pose imminent danger to other drivers.
 - Distracted Driving (D.C. Code § 50-1731.3)
 - Overlaps with other provisions governing texting, talking, etc.

We believe that the following could still be retained by MPD (violations that pose a serious danger to persons or property), until adequate alternatives are found. Violations such as:

- DUI
- Reckless driving
- Driving On Wrong Side ([18 DCMR § 2201.1](#))
- Driving Through Barricades ([18 DCMR § 2217.3](#))

We also completely support the repeal of the Window Tint Prohibition (D.C. Code § 50-2207.02(c)) provision.

We also want to state on the record, that we also believe that automated traffic enforcement is not a sustainable long-term solution. [DC fines residents more than any other city](#), yet at the same time the problems with traffic violence still persist. Also, the [burden of traffic fines falls disproportionately on poor and Black residents](#), while at the time the money from traffic fines are not being fully invested in implementing infrastructure changes to dangerous corridors and intersections.

Long term, if we want to decrease traffic violence then we must change infrastructure, to give residents more safe locations to bike and walk in the city, away from cars. We must also change the roads to reduce speeding, which would lead to changed behavior.

Lastly, for the record we support the Law Enforcement Vehicular Pursuit Reform Act of 2021.

Today, we testify as a part of a growing number of people in the transportation advocacy community, we stand alongside the chorus of voices who will submit testimony on this matter, voices who state that we must divest from dated models that don't work and invest in sustainable solutions. The time is now. Thank You.

Statement Submitted by Professor Josephine Ross

To The

Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chair

The Recommendations of the D.C. Police Reform Commission

Regarding Section 110 of Act 23-336 (“Limitations on Consent Searches”)

Submitted

Friday, May 28, 2021

By

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&

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Greetings Chairman Allen, Council members, staff, and residents of the District. We commend the Committee on the Judiciary and Public Safety for grappling with the complicated and necessary task of police reform and want to focus specifically on abolition of consent searches.

In addition to our oral testimony regarding the modification of Section 110 of Act 23-336 to eliminate the Metropolitan Police Department's use of consent searches, we take this opportunity to address a question that a council member asked another presenter during the hearing on May 20, 2021.

The question asks how the proposed change in consent law would affect a situation where a domestic violence victim wants police to search the home they share with another person?

There are two answers to this question, depending on the actual factual scenario.

- 1) If a victim of domestic violence wants police to enter to arrest an abuser who is in the home, this fits squarely within the "exigent circumstances" exception to the warrant and probable cause requirements. The new legislation does not change this.

The exigent circumstances exception allows the police to conduct a warrantless search when it is "objectively reasonable" under the Fourth Amendment. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (Court held that law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury). This factual example would be considered an exigent circumstance allowing a warrantless search. If the Council adopts the recommendation to abolish consent searches, this will not interfere with the police's ability to enter a home to provide emergency assistance.

- 2) If a victim of domestic violence wants to get their partner or child in trouble by asking police to search for drugs, the police cannot rely on consent but are not left without options.

If the situation does not qualify as an emergency, the police will need to evaluate the tip rather than harnessing the consent exception. The responding officer will ask the complainant why that person suspects that police will find contraband items in the home. If the allegation is credible, then police may obtain a warrant that allows them to search. To apply for a search warrant, the police must have “probable cause,” that is, a reasonable basis for believing that evidence of a crime is present in the place to be searched. *Commonwealth v. Jacoby*, 642 Pa. 623, 652 (2017)(police need reasonably trustworthy information that would warrant a person of reasonable caution to believe that a search should be conducted).

Warrants can now be obtained by telephone. D.C. Code Ann. § 23-522(a). Moreover, police are empowered to secure the premises while they obtain a warrant. In the scenario envisioned by the council member’s question, officers could prevent the domestic partner (alleged abuser) from reentering his or her home as a measure to guard against the destruction of evidence while police prepare the paperwork and assemble a team for the search. *See Illinois v. McArthur*, 531 U.S. 326, 337 (2001).

In fact, a warrant protects the domestic violence survivor who consented to the search by preventing police from conducting a fishing expedition within that person’s home and possibly charging them based on something found during a general search. The new rule protects domestic violence survivors in another way too. Under current law, abusers can employ consent searches to retaliate against their partners, since people generally do not want police rummaging through their drawers. Survivors of domestic abuse who possess illicit drugs risk arrest and prosecution in addition to the unwanted intrusion and the inconvenience of repairing any damage caused by the officers during the process. Requiring the person seeking consent to give the police trustworthy information therefore adds a layer of protection for domestic violence victims against this type of retaliation.

Interestingly, warrants actually provide greater protection than consent searches if a defendant challenges the legality of the search in court. Notably, the Supreme Court excluded evidence seized during a consent search when one of the roommates refused consent. *See Georgia v. Randolph*, 547 U.S. 103 (2006); cf. *Fernandez v. California*, 571 U.S. 292 (2014). Similarly, courts will refuse to find implied consent for searches of spaces that belong to the non-consenting party, such as a son’s bedroom. *See e.g., United States v. Robinson*, 999 F. Supp. 155 (D. Mass. 1998) (mother’s consent did not extend to a closed vinyl bag within son’s bedroom).

In sum, the proposed legislation will not hamper police efforts to respond to domestic violence victims. In the first scenario above, the search will continue to be permitted

through the exigent circumstances exception to the warrant. In the second scenario above, the legislation would prevent a consent search; however, the statutory change will actually improve police practices that better protect victims of domestic violence. This is in addition to protecting the general public against unwanted searches of their homes, bodies and property.



Council of the District of Columbia

Committee of the Whole and Committee on the Judiciary and Public Safety

DC Police Reform Commission Recommendations

May 28, 2021

Submitted written testimony of:

DC Coalition Against Domestic Violence

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Tel. 202-299-1181

www.dccadv.org

The DC Coalition Against Domestic Violence (DCCADV or The Coalition) is the federally-recognized statewide coalition of domestic violence service providers in the District. The Coalition's members include crisis and transitional housing providers, counseling and case management services, legal services, and culturally specific organizations serving: African-American; Latino; Asian and Pacific Islander; Immigrant; and LGBTQ survivors of domestic violence. Our members also serve teens and youth and survivors who are Deaf and Deaf/Blind. The sixteen member programs we represent are on the front lines each day providing life-saving services to more than 30,000 District residents each year. Domestic violence continues to be a leading public safety concern, with 39 percent of women living in D.C. having experienced sexual violence, physical violence, and/or stalking perpetrated by an intimate partner.¹

The Coalition supports many of the recommendations put forth by the Police Reform Commission. For many years, DCCADV has testified at MPD's performance and budget oversight hearings around similar issues. We have testified to bring awareness to some of the awful things that we have heard from survivors and member programs about their experiences with law enforcement in the District. We have also testified because some of our programs are afraid to come forward and express their concerns about MPD directly. Even before last summer, we consistently heard from survivors and domestic violence service providers about many issues with DC's law enforcement agencies. In past efforts to address these concerns, we talked to MPD commanders, provided trainings for police officers and Detectives, and engaged law enforcement with ways to better support survivors. Yet, we continued to hear that law enforcement re-traumatizes survivors, sometimes does not believe them, and even worse, some officers initiates acts of violence against them.

¹ Source: S.G. Smith, et al., *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (2017)

In response to this, in the summer of 2020, DCCADV held four listening sessions with survivors of domestic violence. The focus of these listening sessions was to hear from survivors about their experiences with law enforcement, specifically what happened when the police responded to a domestic violence incident. The listening forums were mostly comprised of survivors who identify as people of color and represented all ages. Survivors who participated described an overall lack of trust of law enforcement, due to negative experiences and abusive behaviors from officers. Some survivors expressed that they feared deportation if they were to complain about an officer or experienced further victimization by MPD after filing a complaint. Additionally, many survivors felt that a difficult situation, turned into a traumatic experience when law enforcement made the situation worse, by blaming them, exhibiting a lack of empathy, or making sexist jokes.

In January of 2021, DCCADV's membership voted to pass a position statement: [The Intersection of Police Response and Domestic Violence in DC](#), on the intersections of police response and the needs of survivors of domestic violence. Our statement overlaps with a number of the Commission's recommendations related to the law enforcement's response to domestic violence. Secondly, on May 4, DCCADV released a response to the Police Reform Commission's Report. You can read both statements in full on our website, but this testimony will address a few points in the Police Reform Commission's Report.

First, recommendation 6(a) states that with funding from the Council, the Office of Victim Services and Justice Grants (OVSJG) should expand the number of domestic violence advocates and allied social workers and counselors who can be safely deployed as first responders in lieu of police or, alternatively, as co-responders along with officers in situations where violence is actively unfolding, could quickly escalate, or if a weapon is involved.

Every year, in addition to testifying at hearings for MPD, we also testify at OVSJG hearings, and every year we ask for more funding to provide critical services to survivors. Domestic violence service providers are under-funded, and many are working at capacity to provide critical services to survivors. We acknowledge that many survivors rely on law enforcement, but we are happy to see that the Commission recommends more funding to expand the number of domestic violence advocates to support alternative responses. The flat funding that many of our programs have received over the years or funding cuts mean DV programs do not have the capacity to fully implement programs that would allow this kind of collaboration. We strongly support the recommendation, and note that in addition to providing more funding to service providers, this initiative will require clear infrastructure as it relates to changes in practices and protocols and more training for 911 operators and responding organizations.

Another recommendation – recommendation 6(c) – advises that once a DV co-response model is in effect districtwide, the Council should repeal the mandatory arrest law and replace it with clear guidance that MPD officers should follow, making arrest decisions in consultation with domestic violence advocates on the scene and survivors themselves.

While mandatory arrest laws were originally praised as being beneficial to survivors, these policies may have made survivors less safe and increased mortality rates.² Incidents of domestic violence are already traumatic and can be lethal for survivors and their families. In 2019, MPD answered almost 29,000 calls for service related to domestic violence. However, that data only covers calls for service, incidents of domestic violence and the number of arrests. As the District examines

² Bridgett, Alayna., “Mandatory-Arrest Laws and Domestic Violence: How Mandatory- Arrest Laws Hurt Survivors of Domestic Violence Rather Than Help Them”, *Health Matrix*, Volume 30, 2020, p. 455

alternatives to policing, the process should involve survivors in the community. The Coalition is in the process of establishing a Survivor Advisory Council and we will be happy to assist in further discussions or research regarding this recommendation.

Another recommendation in section II of the report states that the Council, Mayor, and Office of Victim Services and Justice Grants should develop public-private partnerships to expand temporary shelter for survivors of domestic violence. During FY 2020, the Community Partnership for the Prevention of Homelessness, DCCADV, and the six domestic violence housing organizations in DC worked with The Raben Group to develop a District-wide Domestic Violence Housing Strategic Plan. The funding to support the development of this strategic plan was made possible by the Council, who allocated fund to OVSJG to ensure a comprehensive plan was developed to guide the growth of survivor-specific housing in the District.

The DV Housing Strategic Plan was developed to identify the DV specific housing and services currently available, identify funding across the District that currently supports DV housing, outline barriers to safe and stable housing survivors of DV experience, and provide recommendations to improve housing options for survivors of DV in DC. In their February 2021 Performance Oversight response, the Department of Human Services (DHS) reported “in FY20, 677 families (95% of families) who were assessed for homeless services (through the Virginia Williams Family Resource Center (VWFRC) were) identified as, or disclosed being, survivors of domestic violence/having experienced domestic violence.”³

It is clear survivors need DV specific housing assistance more than ever. In the one-day census of nationwide domestic violence services, 507 adult and child survivors sought assistance for

³ https://dccouncil.us/wp-content/uploads/2021/02/DHS_2021-Performance-Oversight-Pre-Hearing-Responses.pdf

emergency shelters, transitional housing, or other housing in the District.⁴ However, for survivors who made requests for services, during that one day in September 2020, 37 percent of the unmet requests were housing-related. DC doesn't need additional data or research to know that there is a need for housing for survivors. The Coalition supports the Police Reform Commission's recommendation to expand DV housing, and we look to the Mayor's Office to implement the DV Housing Strategic Plan.

A third recommendation in the report stated that The Council should invest in community-based organizations led by Black, Indigenous, and other people of color (BIPOC) to create safe and supportive spaces for communities to hold informal and organic restorative justice circles for healing in the wake of some violent crimes and traumatic events.

The Coalition believes restorative justice is a valuable option for some survivors who wish to pursue it. Many survivors don't want to access the criminal legal system or may not want to see the abuser charged or incarcerated. This is especially true for survivors who are Black, Brown, and/or are undocumented. During the listening sessions last summer, some survivors expressed they want different options, more than the police or courts.

DCCADV encourages the Council to invest in a restorative justice program that is led by BIPOC, is survivor-centered and trauma informed, and is developed by the community.

In Section III of the report, the Commission recommends that the school policing infrastructure should be dismantled and replaced with a holistic public health approach to school safety and crisis intervention that is relational, racially just, restorative, trauma-responsive, and trauma-informed.

⁴ Domestic Violence Counts Report – District of Columbia Summary: <https://nnedv.org/wp-content/uploads/2021/05/15th-Annual-DV-Counts-Report-District-of-Columbia-Summary.pdf>

The Coalition supports this recommendation and we support the removal of MPD officers from DC Public Schools. In DC, Black students are more likely to be arrested when there are police officers in the schools.⁵ The data on arrests and the way Black and Brown youth are treated by police doesn't even speak to the years of trauma, stress and pain youth have to endure because police are in schools. The \$25 million that funded MPD in schools in FY2021 could have been invested in mental health programs and domestic violence prevention efforts. We support the Commission's call for increased trauma-informed training for teachers and staff, restorative justice programming, and expansion of school-based violence interrupter programming and training.

The Coalition has identified other ways to support survivors of domestic violence that expand on the Police Reform Commission's report that can be viewed in our statement on the PRC's recommendations. We thank the District for investing in this essential work and are proud to be a part of the solution.

⁵ *The Black Swan Academy citing the 2019 School Report Card.*

MPD 1D Citizens Advisory Council

Connecting MPD Through People, Technology and Information

Testimony

of

Robert Pittman

Chairman

First District Police Citizens' Advisory Council, Inc.

Before

The Committee of the Whole

Phil Mendelson, Council Chairman

Kenyan McDuffie, Esq. Chairman Pro Tempore

Brianne K. Nadeau, Ward 1 Member

Brooke Pinto, Esq. Ward 2 Member

Mary Cheh, Esq. Ward 3 Member

Janeese Lewis George, Esq. Ward 4 Member

Charles Allen, Esq. Ward 6 Member

Vincent Gray, Ward 7 Member

Trayon White, Ward 8 Member

Anita Bonds, At-Large Member

Robert White, Jr., Esq. At-Large Member

Elissa Silverman, At-Large Member

Christina Henderson, At-Large Member

J&PS and COW Joint Public Hearing

Thursday 20, May 2021

9:30 AM

The First District CAC is a registered 501(c)(3) charitable organization in good standing, our tax ID is 83-0343770. Donations to the First District CAC are fully tax deductible to the extent permitted by law.



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Issues

I caution this Council to slow down in its mission to change everything policing! If you understand policy and management, you should know that moving quickly without the appropriate tools and the measurements I place will not yield solid results. What I have learned about government in over 30 years is that its best to let other agencies, corporations and governments go first with trends. While you are not executives, you are corporation officers and subject to lawsuits. Your chairman should remind you of this. I think you should remember this. Let others go first and shake the problems before you expose your own system to risks. There is no sense of urgency on a controversial report. Most of the recommendations of your Commission on Policing is bias and not well thought out. It points to police officer shootings and incidents only and does not address the self-inflicted harm that black children and adults bring upon themselves. In this version of my testimony, we will highlight the following points:

- Mary Cheh stated in opening remarks that a police officer told her pick out a car and he can stop it? If that happened, it is my hope that she reported this to the District Commander. That is a dangerous and illegal statement in and of itself. If an elected official does not know how to handle an action or statement like this, then it highlights what I have been saying for years. We must train community on how to react to specific problems like this. That means police (MPD), and any other agencies that our residents interact with. People don't know. It's not just Black people, its White, Asian, Latino, African people and all others. Every month new businesses and residents in PSA, Sector and Police Advisory Council meetings ask the same questions. That shows us education of all people is necessary. Your police commission does not address this.
- Tell your Police Commission to share their view of policing with the latest victim, 65-year-old Ms. Ella-Mae Neal, of Southeast, DC family and neighbors. You will see how far that goes. No amount of gun violence interrupters is going to stop this type of random shootings. In England they used knives, here its guns.
- The majority of the community does not support what this Council or your Police Commission is proposing, related to public safety. Simply having a hearing where the advocates of what you are pushing in the middle of the day, when most can't attend or even know is not an excuse to push through this agenda.
- Slow down! You are making the city less safe and exposing the Council to lawsuits.
- Police are not the center of public safety. It appears your Commission understands that now, so the verbiage has changed to De-Centering policing. Laughable. The young and black juveniles that usually find themselves as the center of attention by police is a direct result of the failed DC and PG County schools. Teachers and others in schools who attempt to use police as a force to remove students from classrooms need training, cultural and sociological. Oftentimes, we hear black parents telling crying children, that if they don't stop crying, they will give them to that police officer standing over there. These are the types of statements many black children grow up hearing. So, the inherent fear of police is rooted in the family and neighborhood systems long before a child is old enough to fully understand what police are. SROs have worked to change that socialization. Teachers often perpetuate that fear and misunderstanding of police and political systems based on their own bias.

- I reject the recommendations of the DC City Council's Police Commission because it not thorough. It's not well thought out and it has a bias to policing in general and does not look at why specific actions occur by police in the District of Columbia. The report uses a broad-brush approach to issues related to policing and does not speak to the incidents driven by the action of those who find themselves arrested. A more comprehensive methodology would examine how individuals find themselves in these situations in the first place. It would use case studies and approach the topics in a rigorous manner. This report does none of that. It is tunnel visioned and composed by and for those who are singularly focused. If you don't know policing, don't have an understanding of policing, specifically in Washington, and you have anxieties toward policing or have seen acts of police officers that were less than any of us would expect or except, then and only then, I clearly understand how you can except that this is a well-rounded and exceptionally written report.
- It is not. As one of its members articulated later in the hearing, the understanding of the criticisms of the report. I recognize that the composition of the body is smart, and agenda focused. I'm sure they know that they stacked the deck against an agency which is taking the heat for the failures of DCPS, PGCPs, DC Social Services, Child and Family Services, DC Courts, DPR, and DYRS. These are all players of equal and greater responsibility to children and families.
- Your Police Commission missed the opportunity to highlight how the above agencies were in decades past the disposal grounds for employees that no one wanted. They didn't perform well even when we would advocate for budget increases! We achieved those budget requests and the agencies still failed to perform. They did not know how to charge employees for incompetence and even when they did, missed deadline on reviews and ultimately those were returned to their jobs by arbitrators.
- Your Police Commission missed the opportunity to highlight how the past sins of government and favoritism of councilmembers and management overlooked many problems in those agencies and allowed a system of promotion to be the answer to getting rid of a problem employee. Everyone knew that the person would not succeed as a manager and that was the thinking to ridding individuals from agencies and the System.
- Speaking of bias, bias is already listed in current code in terms of bias policing. Why do you need a bias threat assessment evaluation and if you do, what is the definition of BIAS? It should be defined...
- There is no discussion about the black youth killing each other and how to address this. Violence Interrupters (VI) are not reliable, burn out and must be careful of which neighborhood they go into. There was no comprehensive review, city to city on how effective they are and whether they will show up at 3AM or 3PM. The report did not detail immunity for VI's and who pays for their death, injury or that they find themselves in the wrong neighborhood and are beaten by angry parents. There is so much more to instituting a program like this in the District of Columbia.
- Your Police Commission missed the opportunity to highlight whether public trust would come to VI's in general as a result of their work.
- Your Police Commission missed the opportunity to highlight the enormous cost for all of the social workers and psychologists qualified to work with communities of color. There are not enough of those individuals in the county. So where would they come from and at what cost. The drain on the DC budget would be huge.

- Your Police Commission missed the opportunity to highlight the increase of crime during a pandemic and beyond and how this affects the needs for additional policing. The only discussion of Security and Special Police Officers is massively deficient. As a direct result of a push to Defund and De-Center policing consequences will occur. One unintended effect of this very naive attempt to implement this absurd plan will be more security police and private protection services. This will drive up cost of services and goods. The political backlash will be extreme. There is also a chance the Council of the District of Columbia will face lawsuits for negligence and failure to protect the city.
- The Council does not address crime as it is at this writing and how to stem the tide of juvenile crime.
- There is no discussion about the black youth who are starting fights and bringing weapons into the schools.
- There is no discussion of juveniles who commit murder and strong penalties needed to deter others from doing the same.
- Your Police Commission missed the opportunity to highlight, that many of the cities referenced don't have the same the crime or type of crime that you see in the District of Columbia. None of those cities is a city-state like the District. As an entity that is a collection of neighborhoods, a city, a county, a state, a federal enclave, a federal district and a national capital with a host of foreign nationals and embassies.
- Your Police Commission missed the opportunity to highlight that because of the number of demonstrations that occur almost daily, whether you hear about them or not, and the threat of terrorism, foreign and domestic, the readiness factor of MPD is expected by the President of the United States and the citizens of the District to be at a higher standard. I suspect they did not include this because they don't know it.
- Your Police Commission missed the opportunity to discuss what is domestic terrorism. It was an opportunity to open debate on Black people killing Black people. The causes, the hatred of Black people to Black people and neighborhood turfs where people fight over what side of the block you are from.
- Is that not domestic terrorism? Is that not a pandemic on top of multiple pandemics? This would have been an opportunity for free form discussion open to ideas across the spectrum, not just one type of thought. Where is the BLM outrage and protest for Blacks killing Blacks?
- As one witness pointed out when SROs don't have the background on a student in crisis there is a handicap. The answer is amending federal and local statutes to allow for that access as I have stated in past testimonies. When juveniles are arrested, why not have a balanced discussion on what a SRO should have access to regarding records? SROs are specially trained. It is not true that they are regular police, they are not. The Police Advisory Councils would like to see more training, in many areas including that of SRO.
- As I have pointed out in previous testimonies, OUC can be restructured to provide a great deal of the information that Police Advisory Councils seek, and that the Council seeks. I have a detailed plan as to how that would be implemented and have shared this with the Chief of Police and OUC.
- The Deputy Auditor position can work because the infrastructure is already in place and I think this would be better than an IG for reasons stated today.

- Your commission is clearly tunneled visioned and does not have a clear understanding of policing in DC. If they did, they would have been able to address the issues they raise in a more comprehensive manner. In reviewing their meetings, they were confused, did not understand policing and relied solely on documents. That is a huge mistake when attempting to determine cause and effect. The handicap they have and did have is, because they chose to have an adversarial relationship with those of us who could provide answers that were relevant, including the police and the Mayor.
- This group makes references to specific incidents in schools as though it is the general order of response. That is a bias that hurts the credibility of the report.
- Your Police Commission missed the opportunity to highlight how police are blamed for crime, even though the issues start at home with abusive behavior and corporal punishment. This teaches young children how to react to other children by hitting, fighting and causing harm to themselves and others.
- This group calls on the Jail study that was published as a template in agreement with its own report. However, it fails to mention that many of them were the members of that commission report. That is not transparent.
- The Metropolitan Police Department has many more responsibilities to include the protection of the entire city regardless of how many other federal law enforcement agencies exist. I have stated in the past and has become very clear not only in the last year but on January 6th, January 20th and especially on April 3rd 2021.
- Christie Lopez does not have the capacity to understand the Metropolitan Police Department and the many different organizational parts. She expresses that a smaller leaner department is more efficient. That is an academic view looking at the fact that the majority of police departments in the United States are small departments. They do not carry the complexities or the needs and responsibilities of a department such as the one that we have. Lopez can't possibly understand the organizational structure and what it takes to create matrices for it on a monthly basis simply by reading a few reports and speaking to a few officers in the short period that she has been in this position. The 2D CAC invited Lopez to attend its last meeting. She accepted, then cancelled for CCE. No reschedule no further comment. That is insulting. Perhaps she knew a CAC audience of people who really know the police would be intimidating. She would not be capable of responding to the scrutiny.
- Your commission was weighted in their views. One must free oneself from the weight of one's own convictions. Without the ability to be free of the traumas and visions of past experiences can or could they have made choices that were fair and equitable to the police and to the greater community. That did not happen. That is the greatest injustice of all. To ask that others be fair, but you are not!
- You insist that police officers not have bias. Everyone has bias. You have bias and you show that each time I appear before you. The issue is not bias, but how you suppress that bias and still perform in the interest of the whole community.

You are sending a message to juveniles that they can get away with murder and they do. You are sending a message that adults can get away with murder and judges, who we don't elect are releasing people back to the community who are committing more murders and other crimes. The reasons children make poor decisions is the lack of education and being lost in the school systems by third grade. That is the failure. This commission does not address these issues. You are heaping the failures of parents and government on the police.

There are close to 750,000 people in this city now and over a million other from businesses and tourism. I will continue to support the need for a police force of 5000 because if you want the training and the type of policing that you say do, Members must have the ability to leave patrol and attend classes. We also know that we must protect the city and federal land whether you understand that or not.

Professor Ross raised the issues of decreased Stop and Search numbers in the United Kingdom. There is also a Section 60 stop in the UK. That is a country that I look at the amount of criminal activity and the response by the Metropolitan Police. While I don't know the study of which she references, I am providing the reports I have out of the UK which shows something very different. I have included studies from the UK in past testimonies. The people there kill with knives and blunt force objects.

I know each of you mean well, however your decisions are not well informed. I caution you to not make choices that the people least likely to show up in a community meeting but get pimped by well-meaning activists who are going to write books and make television appearances; those people will be left behind. The people who call 911 more than anyone due to the lack of resources. Let us meet in the middle. At the end of the day decentering the police should be an issue at the ballot box. It is too big of a decision for 13 people to make.

<https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

<https://www.gov.uk/police-powers-to-stop-and-search-your-rights>

<https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard/>

<https://www.statista.com/statistics/284662/weapons-found-during-section-60-stop-and-searches-in-england-and-wales/>

<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

https://www.researchgate.net/publication/225633689_Racial_Disparity_in_Police_Stop_and_Searches_in_England_and_Wales

I write this as my personal comments related to the DC Council's Police Commission Report and the 90 recommendations for change in policing. Once again, I counsel this 13 Member body to move cautiously through this minefield and consider the following:

1. Increasing the age from 18 to 21 where a juvenile may be charged as an adult will not reduce crime as data shows. Potentially you will encourage a certain subset of juveniles to become willing participants in criminal enterprises where for profit the juvenile is willing to commit adult crime for a payout with the understanding that if arrested and convicted the sentence will be minimal. You also put into play the opportunity for adults to force their own children in criminal activity to support a way of life.
2. All of my comments past, present and future are about the safety and security of the District of Columbia. My testimonies and that of others who associate themselves with my tone and posture are about what city police must do everyday to protect all interest in the city, not just the area of juveniles or people of a certain color or background. When applying this approach to every single facet of what police do, the percentage of the issues raised by your Commission is miniscule, however these issues deserve additional scrutiny.
3. Policing must be prioritized based on the categories of violent crime, whether committed by juveniles or adults.
4. Even if I could agree with 50% of your Commission's work, the cost associated with implementation and then the cancellation of many of these measures when you find that they are ineffective, would be millions of dollars, not to include all the litigation against the council and the city.
5. Your Commission never convinced me in their report that they used a tool to adjust for the data they used from other jurisdictions to be compatible with the actions of police in our city, based on population, duties, arrests, citations, and overall responsiveness to the person who came into contact with a police officer. It is difficult to legitimize a report that does not create a fair basis from which to start.

I hope you will consider these points.

Evan Douglas
PRC Hearing 5/28/2021

Goodmorning,

Thank you council and committee for allowing me to speak at today's hearing. I want to affirm all the speakers that have come before me and all of the speakers who will come after me. I hope that we can find a common ground as we look forward to rethinking our public safety here in the District.

My name is Evan Douglas and I am a born and raised Washingtonian and I am currently Policy and Advocacy fellow at the DC Justice Lab. A graduate of School Without Walls and a recent graduate from GW with my masters in criminology. I am also an official spokesperson for the LEAP which stands for the Law Enforcement Action Partnership. More importantly I served as a proud public servant on the Metropolitan Police Department from 2016 until March 2021.

I want to talk to you today about the Police Reform Recommendations. Not all 90 of the recommendations but a select few that I can provide an inside perspective on. I will be talking about 1) Police training/Guardian Model 2) Jumpouts-GRU/CST 3) Qualified Immunity 4)Divestment. I have provided a written testimony with pictures and statistics as well.

The First one I would like to talk to you about is Training reform and adopting the guardian model. We need a severe and drastic shift in police culture and police powers. We need to reteach our officers on how we want them to protect us but we as a community also need to unlearn what we think police officers should be doing in our communities. We don't need them to respond to mental health calls, loose dogs or calls regarding juveniles. The wide majority of calls don't require an armed individual to save the day.

Imagine this, an officer comes to work and has a completely different job description than what he/she is used to. He has more tools for his belt. Measures for de-escalation. A brand new vision of public safety and has positive incentives for community engagement. Police officers true mission is to combat all of the sociological ills that are the offspring of poverty.

Obama's 21 Century Taskforce recommended that rebuilding trust and legitimacy should be our number one priority when we talk about improving our police. By adopting equitable training practices and encouraging the guardian mentality, we will start to gain the trust of the community.

The second recommendation I want to talk about are Jumpouts HOW LONG ARE WE GOING TO CONTINUE TO IGNORE THE DECADES AND DECADES OF RESEARCH DATING BACK TO THE 80s, that shows us TerryStops, Stop & Frisks, or jumpouts, whatever you want to call them, JUST DONT WORK. From New York to Chicago, the results were always poor. .04% poor.

Having these units not only ruins the legitimacy of policing but divides the police and our communities. Treating innocent people like criminals isn't the solution to anything.

We want to resort back to a "community policing model" but as long as you have units like GRU and CST, it doesn't matter how many school resource officers you have or how many community engagement officers you have. The negative interactions from these jumpout groups leave permanent scars on the community.

Qualified Immunity, if we put more liability on officers, maybe they will think twice before kneeling on someone's neck.....We need officers to think before reacting and creating a situation that can permanently change someone's life,

Disinvesting in MPD, particularly in overtime. In 2020, 43 million dollars of our DC taxpayer dollars were donated to MPD to put on facade image of public safety. With all that money homicides still increased, homicides were still not closed, carjackings still went up, and stolen vehicles went up...But we sure did always have police presence down BLM plaza. Whenever we see an All Hands on Deck Activation, we need to question, do we really need that. What will all of those officers be doing? There aren't that many calls of service or details to be covered.

I look forward to any questions and would love to meet with The Council in future. Thank you.

My name is Emory Vaughan Cole, II and I am a law student who is in support of the recommendations made by the Police Reform Commission. Specifically, I urge the Council to adopt Section III Recommendation 2a which would prohibit MPD officers from arresting or detaining students while on school campus grounds for non-school related offenses.¹ Currently, 25% of all students within the District are missing 10% or more of in-class learning and as a result, these students' abilities to achieve their full academic potential is severely weakened.² In order to combat this troubling issue, this Council must approve of initiatives that will both encourage students to come to class and will guarantee that the educational environment within these schools goes undisturbed. These two objectives cannot be achieved if MPD is allowed to arrest and detain students while on school campus grounds.

Firstly, numerous black and brown students nationally have voiced how they feel unsafe and are unable to concentrate academically when they observe a police presence within their schools.³ Notably, when these students witness their fellow peers being publicly detained or arrested, they fear the possibility that they too could be forcibly restrained by a police officer and this fear cripples these students' abilities to focus in-class.⁴ Secondly, not only are MPD detentions and arrests of students distracting to the entire school community but it is also demoralizing to the student being detained or arrested. As former educators within the District that I interviewed highlighted, it is very difficult for students to stay in school once they are detained or arrested on school property. The moments after a student's detention or arrest, the

¹ Page 73 of DC Police Reform Commissions' Decentering Police To Improve Public Safety Report, <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>

² *District of Columbia Public Schools at a Glance: Attendance*, <https://dcps.dc.gov/page/dcps-glance-attendance#:~:text=The%20Office%20of%20the%20State,believes%20that%20every%20day%20counts>

³ Page 31-32 and 40 of *We Came To Learn, A Call to Action for Police-Free Schools*, <https://advancementproject.org/wp-content/uploads/WCTLweb/docs/We-Came-to-Learn-9-13-18.pdf?reload=1536822360635>

⁴ *Id.*

student's peers either humiliate them or actively avoid the student while on campus.

Additionally, teachers also fear and avoid students that have been detained or arrested because they frequently assume, despite having proof, that the student must have committed an extremely heinous crime to have been restrained by an MPD officer while at school. Resulting from their public humiliation and isolation, it is no wonder why a student who has been detained or arrested on school property would not want to skip out or drop out of school. To ensure that these students do not abandon their efforts in securing their education, MPD officers should not be allowed to publicly arrest or detain students while on school campuses.

Lastly, when MPD officers are allowed to detain or arrest students at school, these officers jeopardize the lives of undocumented students within the District. Roughly 28% of all DC students are undocumented and many of them fear coming to school because any interaction that they have with an MPD officer could lead to these students being deported.⁵ Additionally, the educators that I interviewed stated that undocumented students tend to miss days of in-class learning when they feel that their chances of deportation are greater. To alleviate these students' real fears of deportation and in order for DC to fully realize its sanctuary city status, MPD officers should never be allowed to arrest or detain students at schools.

In summary, I fully support the Police Reform Commissions' recommendations because they will ensure that all students within the District feel safe and supported while they pursue their right to an education.

⁵ American Immigration Council's *Immigrants in the District of Columbia* Report, <https://www.americanimmigrationcouncil.org/research/immigrants-in-washington-dc>

Testimony of Eduardo R. Ferrer
Policy Director, Georgetown Juvenile Justice Initiative*
Visiting Professor, Georgetown Juvenile Justice Clinic*

***Opinions provided are those of the Clinic & Initiative but not the University as a whole.**

Public Roundtable on the Recommendations of the DC Police Reform Commission
Thursday, May 20, 2021

Good morning, Chairperson Mendelson, Councilmember Allen, and members of the Committee of the Whole and the Committee on Judiciary and Public Safety. My name is Eduardo Ferrer. I am a Ward 5 resident and, for identification purposes, the Policy Director at the Georgetown Juvenile Justice Initiative and a Visiting Professor in the Georgetown Juvenile Justice Clinic. The views expressed are based on the research and experience of the Georgetown Juvenile Justice Clinic & Initiative and not given on behalf of Georgetown University as a whole. Thank you for the opportunity to testify today in support of the recommendations of the DC Police Reform Commission. In particular, my testimony will focus on some of the specific recommendations in sections 3 and 6 relating to re-establishing police-free schools and promoting a developmentally appropriate approach to the manner in which youth are policed.

I. Re-establishing Police Free Schools

First and foremost, we wholeheartedly endorse the Police Reform Commission’s general recommendations in Section 3 that the District: (1) “[d]ismantle the school policing infrastructure and replace it with a holistic public health approach to school safety and crisis intervention that is relational, racially just, restorative, trauma responsive, and trauma-informed,”¹ (2) reduce the opportunities for youth to be arrested in schools; and (3) make schools weapon-free for youth and adults alike. We also endorse each of the specific recommendations in that section.²

A. Reimagining school safety and creating police free schools

School can often be a site of trauma and fear for many students. In 2019, 9.4% of DCPS and public charter high school students³ and 15% of middle school students reported they had

¹ *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission*, District of Columbia Police Reform Commission (2021), 69.

² *See id.* 67-70.

³ D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUC., 2019 YOUTH RISK BEHAVIOR SURVEY RESULTS: HIGH SCHOOL SURVEY 5 (2020) https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2019DCBH%20Summary%20Tables.pdf (last visited October 16, 2020) [hereinafter YRBS HIGH SCHOOL RESULTS].

skipped one or more days of school because they felt unsafe.⁴ In 2016, 25.3% of youth under 18 years old in DC had experienced at least one traumatic event in their lifetime.⁵ Given that schools have contact with most students every day, schools have the potential to transform and play an impactful and positive role in creating real safety in school and supporting students who have experienced trauma.

However, the way that DCPS staffs its schools is inadequate to provide the individualized resources necessary to support the high numbers of students with histories of trauma. Indeed, during the 2019–2020 school year, there was, on average, one contracted security guard for every 165 students in DCPS.⁶ In stark contrast, there was only one budgeted social worker for every 254 students, one budgeted psychologist for every 529 students, and one budgeted counselor for every 352 students.⁷

In addition, students of color are more likely to be policed in school than their white peers in DC, adding another source of potential trauma to their school experience. For example, Ballou High School, which is 98% Black, has one security guard for every sixty-two students,⁸ whereas Woodrow Wilson High School, which is 37% white, 31% Black, and 21% Hispanic/Latino has only one security guard for every 189 students.⁹ This statistic is particularly troubling when one considers the well-documented harms posed by police officers in schools to students, including police intervention for minor misconduct, increased loss of instruction, and lower rates of graduation and college enrollment.¹⁰

⁴ D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUC., 2019 YOUTH RISK BEHAVIOR SURVEY RESULTS: MIDDLE SCHOOL 44 (2020) https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2019DCBM%20Summary%20Tables.pdf (last visited October 16, 2020) [hereinafter YRBS MIDDLE SCHOOL RESULTS].

⁵ Indicator 6.13: Has this child experienced one or more adverse childhood experiences from the list of 9 ACEs?, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5150&r=10> (last visited Oct. 16, 2020).

A “traumatic event” is fully defined as one of the nine following Adverse Childhood Experiences: 1) Experiencing economic hardship; 2) experiencing a parental divorce or separation; 3) living with someone who had an alcohol or drug problem; 4) being a victim of neighborhood violence or witnessing neighborhood violence; 5) living with someone who was mentally ill, suicidal, or severely depressed; 6) witnessing domestic violence; 7) having a parent who was currently or formerly incarcerated; 8) being treated or judged unfairly due to one’s race or ethnicity; and 9) experiencing the death of a parent.

⁶ *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission*, District of Columbia Police Reform Commission (2021), 68.

⁷ *Id.*

⁸ *Ballou High School*, DC SCHOOL REPORT CARD, <https://dcschoolreportcard.org/schools/1-0452> (last visited Oct. 16, 2020); 2019–2020 MPD SCHOOL SAFETY REPORT at 11.

⁹ *Woodrow Wilson High School*, DC SCHOOL REPORT CARD, <https://dcschoolreportcard.org/schools/1-0463/profile> (last visited Oct. 16, 2020); 2019–2020 MPD SCHOOL SAFETY REPORT at 13.

¹⁰ DANIEL J. LOSEN & PAUL MARTINEZ, LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN 33 (2020), <https://www.civilrightsproject.ucla.edu/research/k->

Real safety for our students means both that they are safe (physically free from harm) and feel safe (psychological and emotional safety). To achieve both, DC must reimagine school safety by adopting a holistic, public health approach to school safety that is relational, racially just, restorative, and trauma-responsive. This means: 1) eliminating the outsourcing of school security to a private corporation and 2) diversifying the school staff responsible for promoting safety to include credible messengers, roving leaders, student safety coaches, social workers, counselors, restorative justice practitioners, among others.

B. Schools as sanctuaries

Additionally, DC schools must be a sanctuary for our students. To that end, DC must: 1) prohibit the arrest of youth in schools for non-school based offenses or custody orders; 2) prohibit the interviewing or interrogation of youth in schools; 3) eliminate the MPD School Safety Division;¹¹ 4) prohibit youth and adults from carrying firearms in schools;¹² and 5) implement non-law-enforcement-driven crisis response and safe passage systems.

II. Ensuring Developmentally Appropriate Policing

Second, in addition to reestablishing police-free schools, our laws must also reflect the reality that kids are different from adults in ways that must guide the manner in which youth are policed. This is especially true when we are deciding whether a police response is the appropriate way to respond to common adolescent behavior and when police officers are asking youth to waive their constitutional rights. As such, we must reform our laws to both to decriminalize normative youth behavior and provide youth more than just the bare minimum constitutional protections, particularly when it comes to youth waiving their rights under the Fourth and Fifth Amendments. Specifically, as I discuss in more detail in my written testimony, this means, among other things, 1) decriminalizing normative youth behavior like status offenses, threats,

[12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v12.pdf](https://www12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v12.pdf); Denise C. Gottredson, Erin L. Bauer, Scott Crosse, Angela D. Greene, Carole A. Hagen, Michele A. Harmon & Zhiqun Tang, *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIMINOLOGY & PUB. POL'Y 905, 930 (2020).

¹¹ Currently, the District spends at least \$14 million on MPD's School Security Division. This division should be eliminated and the money saved should be reinvested directly in youth and family in a manner consistent with the recommendations proposed in Section III *infra*.

¹² Specifically, officers of all types should disarm prior to stepping foot on a school campus unless they are specifically responding to the *very rare* report of a shooting or armed individual on campus. See David Ropeik, *School Shootings are Extraordinarily Rare. Why is Fear of Them Driving Policy?* Washington Post. (March 8, 2018). Available at: https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-e8f9d112159c_story.html (finding that the statistical likelihood of any given public school student being killed by a gun, in school, on any given day since 1999 was roughly 1 in 614,000,000).

disorderly contact, etc.; 2) abolishing the consent searches of youth; and 3) requiring counsel prior to youth being able to validly waive their Miranda rights.

A. Decriminalizing Youth Behavior

In order to reduce the oversized footprint that police have in the lives of DC youth, the District of Columbia also should revisit the manner in which it has criminalized adolescent behavior.¹³ For example, youth can be charged in DC with being a person in need of supervision for status offenses – behaviors such as truancy or running away from home that are only unlawful because of the age of the person engaged in such behavior.¹⁴ These offenses bring children into the juvenile legal system as a result of issues that do not have a direct connection to public safety and are more productively and effectively addressed within schools, families, and communities.

In addition, certain offenses – for example, threats, disorderly conduct, loitering, etc. – too often criminalize hallmark characteristics of normative adolescent development, such as emotional speech, impulsivity, high energy, and the seeking of social groups. Indeed, too often youth are stopped or arrested by police for such behaviors despite the lack of any criminal intent behind the behavior.¹⁵ As a result, decriminalizing certain offenses for youth should reduce unnecessary (and often unjust) contact with the police and juvenile legal system.

B. Abolishing Consent Searches for Youth

DC’s approach to “consent” searches of youth is not developmentally appropriate. It fails youth by treating them as if they are the same as adults, which they are not. Adolescents are more impulsive, sensation-seeking, likely to make decisions based on “immediate” gains rather

¹³ See District of Columbia Juvenile Justice Advisory Group Recommendation to Mayor Bowser: *Create New Opportunities for “Persons in Need of Supervision” (PINS) to Succeed without Legal Intervention*, February 21, 2020, https://ovsjg.dc.gov/sites/default/files/dc/sites/ovsjg/service_content/attachments/JJAG%20PINS%20Alternatives%20Report%20February%202020.pdf.

¹⁴ *Id.*

¹⁵ Analysis of the most recent stop-and-frisk data released by the Metropolitan Police Department

(MPD) revealed that of the people under 18 who were stopped by police in the District, Black youths made up 89 percent and were stopped at 10 times the rate of their white peers. See ACLU-DC, RACIAL DISPARITIES IN STOPS BY THE D.C. METROPOLITAN POLICE DEPARTMENT: REVIEW OF FIVE MONTHS OF DATA, *at* https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf.

than “long-term” consequences, and susceptible to peer pressure than adults.¹⁶ Youth are also less aware of their legal rights.¹⁷

Additionally, DC’s current policy does not account for the personal and cultural context for DC youth, especially Black youth. Black youth – who are grossly overrepresented in DC’s juvenile legal system¹⁸ – living in over-policed areas often feel compelled to consent to searches based on their own personal, often traumatic, experiences with law enforcement and the historical experiences of police violence against Black people in DC.¹⁹ They have essentially been conditioned to “consent” without even being asked; when they see an officer, youth lift up their shirts and to display their waistbands unprompted to avoid harassment by the police.²⁰

The current legal framework for “consent” is a constitutional floor. DC can and should implement a consent search policy which is developmentally appropriate and adequately protects youth from police coercion. The law in DC should be changed so that the fruits of a search are *inadmissible* in any criminal or delinquency proceedings if seized when: (1) the subject of the search is a youth under 18 years old; (2) the justification for the search by sworn members of a DC law enforcement agency is consent; and (3) the search is not executed pursuant to a warrant or another exception to the warrant requirement. This new exclusionary rule would apply even when law enforcement officers did not know the age of the individual when they were searched. Significantly disincentivizing consent searches by making their fruits inadmissible in court will hopefully reduce the harassment youth face on the streets and the trauma they experience as a result of that harassment.

¹⁶ See *J.D.B.*, 564 U.S. at 273; Laurence Steinberg et al., *Are Adolescents Less Mature than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA ‘Flip-Flop’*, 64 AM. PSYCHOL. 583, 592 (2009).

¹⁷ Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513, 1536-1537 (2018).

¹⁸ Rights4Girls & Georgetown Juvenile Justice Initiative, *Beyond the Walls: A Look at Girls in DC’s Juvenile Justice System*, 30 (March 2018), <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/03/BeyondTheWalls-Final.pdf>.

¹⁹ See Dylan B. Jackson et. al, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 Journal of Adolescent Health 627, 629; Dylan B. Jackson et. al, *Low self-control and the adolescent police stop: Intrusiveness, emotional response, and psychological well-being*, 66 Journal of Criminal Justice, 2020, at 1, 8; Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. Journal of Pub. Health 2321, 2324 (2014); Nikki Jones, “The Regular Routine”: Proactive Policing and Adolescent Development Among Young, Poor Black Men, in *Pathways to Adulthood for disconnected young men in low-income communities*. New Directions in Child and Adolescent Development, 33, 45 (K. Roy & N. Jones 2014); B.M. Tynes et al., *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color*, 65 Journal of Adolescent Health 371, 376 (2019).

²⁰ See, e.g. Sam Sanders & Kenya Young, *A Black Mother Reflects On Giving Her 3 Sons ‘The Talk’ ... Again And Again*, NATIONAL PUBLIC RADIO (June 28, 2020), <https://www.npr.org/2020/06/28/882383372/a-black-mother-reflects-on-giving-her-3-sons-the-talk-again-and-again>; *United States v. Gibson*, 366 F. Supp. 3d 14, 21 n.4 (D.D.C. 2018) “the MPD’s rolling roadblock practice is so prevalent in the District of Columbia that individuals living in high-crime neighborhoods sometimes show MPD officers their waistbands ‘without [MPD officers] even saying anything.’” (citation and internal quotation marks omitted).

C. Requiring Counsel Before *Miranda* Waivers

Similarly, the *Miranda* doctrine represents the minimum of what is required under the Constitution to advise a child of their rights, but that does not make it sound policy. For instance, due to their psychosocial immaturity, among other things, young people as a class are far less equipped than adults to waive their *Miranda* rights.²¹ Additionally, some adolescents who are questioned by DC police lack the cognitive ability to even understand *Miranda* warnings.²² Finally, just as the backdrop of police violence against Black people in DC undermines the ability of youth to give meaningful consent for searches, it also creates a powerful force undermining the voluntariness of any waiver Black youths may make.²³ They may waive their *Miranda* rights just to get out of the interrogation room. In this respect, for Black youth *Miranda* warnings do not serve as an effective deterrent against the coerciveness of police interrogation.

As such, DC's policy of police interrogations of youth must also be reformed. The law in DC should be changed so that statements made by youth under 18 during custodial interrogation are inadmissible *unless*: (1) they are read their *Miranda* rights by a law enforcement officer in a developmentally appropriate way; (2) they have the opportunity to consult with counsel before making a waiver; and (3) in the presence of their attorney, they make a knowing, intelligent, and voluntary waiver of their rights.²⁴ A more mature *Miranda* doctrine for youths in DC that includes the right to counsel before they make a waiver decision preserves the rights of children, cuts down on coerced confessions, and protects the purpose that animated *Miranda* in the first place.²⁵

Conclusion

Thank you for the opportunity to testify today.

²¹ Thomas Grisso, *Adolescents' Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 10 (2006).

²² See Kerstin Konrad, et al., *Brain Development During Adolescence*, 110(25) DEUTSCHES ARZTEBLATT INT'L 425, 426–27.

²³ Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. STATE L. J. ____ (forthcoming December 2020).

²⁴ Katrina Jackson & Alexis Mayer, *Demanding a More Mature Miranda for Kids*, D.C. Justice Lab & Georgetown Juvenile Justice Initiative, at bit.ly/mature-miranda.

²⁵ Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29(6) LAW AND HUMAN BEHAVIOR 723, 737 (2005).

Testimony
District of Columbia City Council
Committee on the Judiciary and Public Safety
Committee of the Whole

Thursday, 18 May 2021

Ronald E. Hampton

My name is Ronald E. Hampton; I am a retired D.C. Metropolitan Police Officer and former Executive Director of the National Black Police Association. Presently, I am serving on the D.C. Police Reform Commission. The council established the D.C. Police Commission in the third quarter of last year. I and my colleagues were selected in and around August 2020 with a mandate to deliver our recommendations originally by December 2020. That date/deadline was extended to April 2021 due to the extensive work involved in the collection and analysis of finalizing the recommendations.

I am testifying in support of the recommendations and encouraging this legislative body to accept as well as start the implementation process. We need these recommendations if we are serious about changing the way policing have been done in Washington, DC. Believe it or not, I have been involved in this work for over fifty years. Twenty-four of those years serving in a police department that was an excellent example of a systemic racist organization for those in the department as well as how the department's behavior in the Black neighborhoods. The last twenty seven years I and many others social justice organizations and individuals have spent an awful amount time and efforts to talking about and working on so called reform only to be met with resistance and out right refusal to treat and respect the rights of Black and Brown people.

So, this is our best chance at bring about the much needed changes across the department. These recommendations are comprehensive and in my opinion must be implemented together in order to provide the level of community health, safety and healing deserved now.

Thank you for the opportunity to present this testimony today regarding this very important matter.



**Testimony of Samantha Paige Davis
Executive Director, Black Swan Academy
Commissioner, Police Reform Commission
Joint Public Hearing with COW and J&PS
May 20, 2021**

Good afternoon, Councilmembers.

I am Samantha Davis, the Founder and Executive Director of the Black Swan Academy (BSA). BSA is a racial justice and advocacy organization building a pipeline of Black youth civic leaders, committed to improving themselves and their communities through advocacy and organizing. We unapologetically lead with racial equity, fight for systemic change, and trust and invest in youth leadership. I am also a commissioner with the Police Reform Commission. We are approaching a year since the residents of this city rallied in historic numbers to demand racial justice, removing police from schools, defunding the police and investing in communities. I still believe the delayed response to take bold actions, has made the city in many ways complicit in the continued harm and trauma Black residents experience day to day by the system of policing. Now, we are presented with yet another opportunity to boldly and strategically invest in true safety for young people. We can do so knowing that the 15,000 plus residents who testified last year, Black and Brown youth all over the city, the State Board on Education, the Taskforce for Jails and Justice and the Police Reform Commission (a body formed by this council) all agree that we must immediately remove police from schools and reimagine school safety by divesting from positions and practices that are carceral or punitive in nature and investing in resources that promote a liberatory, healthy, safe and positive school environment.

I want to give honor and express gratitude to the Black youth and youth of color, parents, educators and organizers who have been organizing on this issue for years and whose organizing efforts are responsible for moving this work forward. Their efforts have forced us all to think critically about the ways in which our reliance on police causes harm and the urgent need to invest in the social emotional well being of young people.

As a commission we stand in solidarity with young people, calling for the Mayor, the city council, DCPS, DC Public Charter Schools, OSSE and all other stakeholders to make the necessary changes in the budget, policies and practices to ensure that schools are a sanctuary, where all young people can learn, develop, and make mistakes without fear of harm or persecution. To make this vision a reality, the Council should prohibit MPD and other law enforcement agencies from serving warrants, detaining, or arresting youth on campus or at school-related events. The Council should enact similar safeguards that extend to school personnel to protect students and

their family members from District and federal immigration enforcement agencies. Schools should be weapon-free zones. Law enforcement officers should be required to disarm before entering a school, unless responding to a violent incident.

We are also joining the call for police-free schools; by the end of FY21, the Council should eliminate the Metropolitan Police Department School Safety Division and create a community-led process to re-allocate those resources (roughly \$14 million); and make additional investments supporting positive youth development and promoting safe and healthy learning environments. Our call to remove police from schools is one grounded in the understanding that the conversation around police-free schools is about the system of policing, not the individual police officer. It is about investing in approaches to safety that are trauma-informed, preventative, restorative and equitable. We understand the system of policing is rooted in systemic racism. It is designed to suppress the voices of young people and otherwise marginalized communities. That policing relies on coercion, escalation and fear as tactics to control undesired behaviors. This history is why when police are in our schools, the most marginalized students are more likely to experience harm and be arrested, Black students, immigrant students, disabled students, queer students, students dealing with housing instability. In DC, 100% of school-based arrests are youth of color, 92% Black, nearly 1/3 youth of color with disabilities.¹

We couple our call for divestment with the need to radically invest in the health and safety of young people. Our failure to invest in appropriate resources and care-based positions in our schools, forces schools to rely on police (and security personnel) to do the jobs they are simply not meant or capable of doing. More often than not we are criminalizing youth for normal adolescent behavior, for their responses to trauma or for their disabilities. In practice this is:

- A 7 year old, autistic Black boy who had the police called on them for removing his masks on a school bus;
- The students who missed a few days of virtual school and had the police at their home door to do a “wellness check” instead of a teacher or social worker.
- The young people that MPD picked up over 1,500 times before the pandemic for truancy.

And case examples provided by Children’s Law Center, including:

- A five year old who was visited by a police officer, instead of social worker, taken away and interviewed alone about abuse allegations
- A nine year old who was handcuffed for being emotionally distraught
- A 11 year old who was handcuffed for running through the halls and then transported by MPD in handcuffs to this hospital when a parent couldn’t be reached

The District must radically invest in our schools! We must increase investments in community-competent, trauma-informed school-based mental health professionals. The Commission’s own analysis shows that many D.C. schools fall far short of national standards regarding student-to-staff ratios. In a sample of 114 schools, 71% did NOT meet the staffing

¹ 2019 School Report Card indicates that there were 338 total arrests of students across the District – 312 of the arrests were of Black students and 26 of the arrests were of Latino students. (104 of the arrests were for students with disabilities).

standard for school counselors; 62% did NOT meet the staffing standard for school social workers; and 38% did NOT meet the staffing standard for school psychologists—professionals who are critical to student well-being. While DC public schools have, on average, one security guard for every 165 students, they have only one social worker for every 254 students, one counselor for every 352 students, and one psychologist for every 529 students. Increased funding would support other valuable services and resources, including Positive Behavioral Intervention and Supports (PBIS) programs, violence interrupters, community-led safe passage initiative and restorative justice, more art classes, and extracurricular activities. Resources should be distributed based on a school's needs and the needs of its surrounding neighborhoods.

The Police Reform Commission recognizes that to achieve police-free schools we must address the larger policing culture within our education system that contributes to the school to prison pipeline. That includes police officers, security personnel, disciplinary policies and practices among others. We found that like national stats, D.C too, is choosing to police Black youth in schools more than peers. The increased presence of school security personnel as well as school police is correlated with racial demographics. Of the 44 DCPS schools that are part of SRO beats/clusters, 70% have student populations that are at least 50% Black. Where Black students make up <25%, there is one security guard every 312 students. Schools with 75% or higher Black student population. One security guard for every 203 students. For example: According to MPD, School without Walls has an enrollment of 590 students and has 4 guards assigned. Anacostia has 321 students and 7 guards assigned. Woodson has 468 students and 8 guards assigned. Ballou has 573 students and 12 guards. Wilson has 1872 and 10 guards assigned. I want to be clear, this is what institutional racism looks like. We can no longer stand by such blatant forms of over policing and criminalizing Black youth. We need to completely eliminate the presence of school police, drastically reduce the number of traditional security guards in our schools; and increase our overall investment in a holistic public health approach to school safety.

We have heard the concerns of these recommendations and we believe that all of these concerns can be addressed with 1.) further education on alternatives to policing that are preventative, anti-racist and trauma informed approaches to safety. In conversations we have had with school leaders, it has been a common understanding (even among school leaders that have expressed opposition to our recommendation), that school police are not the best approach to discipline or safety, but simply the approach is most known, has sustained investments and is therefore the most reliable. 2.) a sustained and long-term commitment from the Executive, Council, and Education Government Agencies to radically invest in the non-law enforcement resources that are proven to be more effective and aligned with schools' stated missions of positive, equitable, restorative school climate. The greatest concern we have heard is the lack of trust that DCPS in particular will continue to invest in school based resources at the levels necessary to maintain true safety. 3.) an overall increased investment in public safety, that decenters the police and builds community capacity to keep ourselves safe. A genuine and valid fear that continues to be expressed is the impact community violence has on our neighborhood schools. The removal of police in schools needs to be coupled with the increase

in both the school based AND community resources that are outlined in this report. The reality is there are schools within the same neighborhoods that don't have assigned SROs and yet have found ways to still be informed of external threats of violence happening in their communities. We must acknowledge, review and adopt the policies and practices some schools have already put in place to intentionally prohibit/limit the role law enforcement and security personnel play in their schools. That includes the schools without security officers, the 25% of DCPS schools that do NOT have school police assigned to them, the schools that prohibit security personnel and law enforcement from getting involved in school disciplinary actions, the schools that have created systems for support staff to do wellness checks instead of police, the schools that prohibit law enforcement from arresting or detaining students on school grounds. 4.) Lastly, we must all do the hard internal work to unpack and unlearn the problematic and anti-black beliefs we have about our young people. Solutions that call on police, at the core, are rooted in a belief that Black people, Black young people are inherently bad, violent, and criminal. Policing our young people is never acceptable. Arresting young people is never acceptable. The perceived need to do so, is only a reflection of our failure to provide youth and communities with the support and safety they deserved from the beginning. The issue is not with our black youth, the issue is with the violent and criminal societal norms, policies and practices that are the foundation of our policing infrastructure AND our education system. We must be honest as school leaders, electeds, educators, organizers, “do-gooders” that we all are complicit in perpetuating that harm. Then, we must do the work.

The goal is not to reimagine police or security. The goal is to create the conditions necessary for true safety to exist, for thriving communities and schools to exist without relying on fear, punishment, police and otherwise carceral approaches.

We implore you to implement these recommendations to go in effect by School Year 2021-2022. Again, we also call on education agencies to create written protocols that compliment these recommendations, discourage employees from engaging security or police as first responders and make it possible for them to coordinate the appropriate non law enforcement response to ensure youth and their families have the support they need.

In a commitment to building a world where young people are met with the dignity and love they deserve, I thank you for the opportunity to testify today.

TESTIMONY REGARDING POLICE REFORM COMMISSION REPORT

Marina Streznewski

May 20, 2021

Good afternoon. My name is Marina Streznewski. I am 45-year resident of the District of Columbia, now living in Foggy Bottom. This testimony is mine alone and does not reflect the position of any organization with which I am affiliated.

As the report of the Police Reform Commission is extensive and detailed, I plan to limit my testimony. I would like to begin with a few general comments about the report. It is excellent and clearly shows evidence of the hard work and commitment of Commission members. However, it appears to assume that ALL crime will end if people are provided with basic human needs – jobs, physical and mental health care, nutrition, housing, etc. It discounts the human character flaws which lead to crime – greed being among the most significant. As such, the report fails to address the fact that police will be necessary in some instances, or to describe the precise responsibilities of police once their role in public safety is decentralized. In addition, the timeline is too optimistic for the major culture shift – both inside and outside of MPD - the report envisions. Simply reallocating funds in the District budget will be insufficient to achieve the laudable goals set forth in the report.

The Commission proposes important goals that are achievable, albeit over a longer timeframe than suggested. Among these are shifting the mindset of police – and the expectations of those they serve – to guardian as opposed to warrior. Warriors view those they are pledged to serve as the enemy. We see the poor outcomes created by the warrior mindset. A full shift to the guardian mindset will require changes in the way MPD recruits, trains, promotes, and rewards officers. While the Academy has taken steps in the guardian direction, recent graduates are often told to “forget everything you learned at the Academy” once they are in the field with veteran training officers. This allows the warrior mindset to flourish. MPD should establish more specific criteria for selection of training officers and develop training modules for potential training officers that reinforce the guardian mindset.

Another important goal noted in the report is the adoption of a harm reduction model of policing. It is not the purpose of police officers to leave a situation worse than they found it. To achieve the harm reduction goal, it is essential that officers are encouraged and empowered to find solutions other than arrest or the use of force. Decriminalization of low-level, victimless offenses will help, as will creation of more diversion-based options. Moreover, MPD should find other ways of evaluating officers besides numbers of arrests. As one officer noted, “I play basketball with kids in the community. They are not committing crimes when we’re playing, and I am developing relationships with them. Yet I am not given credit for this, even though I am preventing crime.”

Another goal stated in the report is the ending of qualified immunity for police officers. This is an enormously controversial goal. Growing realization by the general public of the horrible

ways many police treat people of color – especially Black people – has caused us to question this longstanding concept. Pundits on the left complain about how the concept of qualified immunity has long been abused; they note its origins in efforts to maintain segregation. Pundits on the right express fear that ending qualified immunity will reduce the number of individuals entering police work, place officers in danger because they may hesitate to act, and potentially create a huge financial burden for police who must defend against lawsuits.

Discussions with active-duty officers – even good officers - reveal many of the same fears. While the vast majority agree that qualified immunity has become a shield for bad behavior by bad officers, they fear that ending it completely will place even good officers at risk for frivolous lawsuits. One officer noted the number of complaints filed against him throughout his career with the Office of Police Complaints – none of which have been sustained. Without qualified immunity, he notes, those complaints could become lawsuits. In one case, a citizen filed an OPC complaint against this officer for failing to arrest someone who was not, in fact, breaking any law. Defending oneself from lawsuits – even frivolous ones – is expensive. And even though MPD officers are reasonably well paid, legal fees could prove devastating.

The solution seems to be somewhere in the middle. There are occasions when qualified immunity is appropriate. But we may be better served with more attention to “qualified” rather than “immunity.”

One problem with qualified immunity is that it can prevent the finding of facts in a particular circumstance. If a district attorney declines to file criminal charges in an incident where an officer is accused of, for example, violating an individual’s rights with inappropriate use of force, that person and their family have no recourse. They are not even able to benefit from the discovery process that would accompany any other civil action. Perhaps discovery could take place prior to deciding whether qualified immunity applies in a particular case. Perhaps a group of citizens – similar to a grand jury in criminal actions – could assess the facts and decide whether the officer should benefit from qualified immunity. This approach would protect officers from frivolous lawsuits, but would ensure those who violate laws, regulations, and/or MPD policies would be held to account.

Overall, the Police Reform Commission has taken essential first steps toward the reform of public safety and redefining the role of the police in the system. But more work to refine processes and define details is necessary.

Thank you for your time and consideration.

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
DC Council Committee on Judiciary and Public Safety & Committee of the Whole
Public Hearing on
The Recommendations of the D.C. Police Reform Commission
Thursday, May 20, 2021
by
Nassim Moshiree, Policy Director**

Good afternoon. My name is Nassim Moshiree, and I am the Policy Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present the following testimony on behalf of our more than 15,000 members and supporters across the District.

The ACLU-DC is committed to working to dismantle systemic racism, improve police accountability, safeguard fundamental liberties, and advocate for sensible, evidence-based solutions to public safety and criminal justice policies. The ACLU-DC is also an active member of the Police Free Schools Coalition and the Fair Budget Coalition.

We are pleased to testify in broad support of the comprehensive recommendations put forth by the D.C. Police Reform Commission (PRC) in their report, “Decentering Police to Improve Public Safety.”¹ We found the recommendations to be thoughtful, evidence-based, and largely reflective of concerns and solutions that community members have been raising for years.

This testimony includes some recommendations of the report that the ACLU-DC views as critical to restricting harmful police practices and holding police accountable to the law and to the communities they serve. My colleague Natacia Knapper will address recommendations on decentering the role of police and strengthening the safety net to achieve public safety in separate testimony.

The mass movement for racial justice and police accountability has led the District and the country to this watershed moment. The time to act is now, and we believe that the Police Reform Commission has provided a clear blueprint of the many and varied steps we must take as a community to achieve true public safety and to reverse the decades of trauma and injustice inflicted on Black and Brown community members that continues to this day. Many of the suggested reforms in the report can and should be included in the permanent version of the “Comprehensive Policing and Justice Reform Amendment Act” (“Comprehensive Policing Act”) that the Council passed as emergency and temporary legislation last year.

¹ District of Columbia Police Reform Commission (PRC). “Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission.” April 1, 2021. Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>.

I. Restricting police powers, practices, and policies that routinely violate the rights of civilians interacting with law enforcement.

A. Limitations on MPD's Stop and Frisk Practices

MPD's alarming stop and frisk tactics persist. In March of this year, after yet another lawsuit against the District over NEAR Act data, the ACLU-DC published a report² analyzing the stop data from 2020. This data showed continued stark racial disparities in police stops, with Black people making up 74.6% of all stops in the District. Furthermore, Black people made up 90.7% of searches that resulted in no warning, ticket, or arrest. Because these searches are the ones most likely to arise from innocent conduct, these statistics suggest that MPD is overwhelmingly subjecting Black residents to intrusive police encounters despite their not violating the law. The data reaffirms community members' repeated, urgent calls year after year about the need to limit these harmful practices. To this end, we seek to highlight the Police Reform Commission's recommendations in Section V.

1) First, per recommendations 1³ and 2,⁴ MPD should disband "specialized" units like the Gun Recovery Unit. Our data analysis shows that MPD's claims about gun recovery are vastly overstated: only 1% of all stops and 2.2% of all non-traffic stops in 2020 led to the recovery of a firearm.⁵ So not only is the GRU's efficacy questionable, but its aggressive tactics are more likely to result in unwarranted stops, searches, arrests, and uses of force, including potentially lethal force. MPD should instead require all officers – including those in specialized units – to be readily identifiable as police officers with names and badges visible and in marked police cars. These recommendations are crucial in reducing dangerous stops.

2) In line with Recommendations 3,⁶ 4,⁷ and 7,⁸ the Council should prohibit "jump outs," end pretextual stops, and require reasonable articulable suspicion to justify a protective pat-down. Reasonable articulable suspicion must not be based on boilerplate language such as "bulge in clothing," "characteristics," or "for officer safety," or on factors such as nervousness or presence in a "high crime area," but instead be based on specific, individualized facts. Black people made up over 90.5% of those who experienced a search or pat-down of their person or property in

² ACLU Analytics & ACLU of the District of Columbia. "Racial Disparities in Stops by the Metropolitan Police Department: 2020 Data Update." March 10, 2021. Available at https://www.acludc.org/sites/default/files/field_documents/2021_03_10_near_act_update_vf.pdf.

³ District of Columbia Police Reform Commission (PRC). "Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission." April 1, 2021. Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>

⁴ Id at 1. Section V, Recommendation 2. Page 95.

⁵ Id at 2. Page 5.

⁶ Id at 1. Section V, Recommendation 3a. Page 96.

⁷ Id at 1. Section V, Recommendation 4. Page 100.

⁸ Id at 1. Section V, Recommendation 7. Page 104.

2020..⁹ Despite there being a negligible difference in weapons recovered after searches of Black people as compared to searches of white people, Black people were 5 times as likely to undergo a pat-down or search.

3) MPD must also be restricted from conducting intrusive searches. The Council should prohibit body cavity searches, in line with PRC Recommendation 9 and MPD General Order 502.01. Despite MPD's General Order prohibiting officers from conducting body cavity searches, MPD regularly violates this policy. The list of individuals who have been subject to these traumatic, sexually invasive searches continues to grow.

4) Finally, the Council's passage of the NEAR Act and its data collection requirements formed the basis for better transparency and public accountability of MPD. However, the quality, transparency, and impact of NEAR Act data can and must be improved. We've submitted specific recommendations to the Council and the Commission for improving the quality and transparency of the data and we generally support the PRC's recommendations on this.

B) Limitations on Use of Force and Weapons

The recent report issued on March 23, 2021 by the D.C. auditor found that not only is compliance with Use of Force restrictions and policies poor, but that MPD does not recognize that problems even exist and is therefore not compelled to remedy them. The Use of Force reports by the Office of Police Complaints over the past several years have identified similar resistance to change. Similarly, the militarization and use of aggressive tactics and unchecked surveillance by police has created an environment in which certain communities view police as an occupying force rather than as a civil servants charged with ensuring safety.

1) The ACLU-DC supports all of the recommendations of the PRC with regard to use of force and urge the Council to immediately amend the temporary Comprehensive Policing Act to expand prohibited use of force beyond neck restraints,¹⁰ and to include that provision as well as the law's restrictions on deadly use of force,¹¹ and its expansion of the membership of the Use of Force Review Board¹² in the permanent version of the law. We further urge that use of force legislation passed by the Council include remedies for those whose rights are violated by officers acting outside the confines of the law.

⁹ Id at 2. Page 4.

¹⁰ District of Columbia Police Reform Commission (PRC). "Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission." April 1, 2021. Page 120 Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf> As the report correctly points out, "because there are restraints other than neck restraints that cause asphyxia, including certain restraints that cause positional asphyxia (e.g., "prone restraint," or "hogtying" an arrestee face down, especially with a knee in their back), the prohibited types of restraints should be expanded beyond "neck restraints."

¹¹ Id at Page 121. Section V, Recommendation 21. Use of Deadly Force, under Subtitle N, which restricts the use of deadly force in [DC Code 5-337.01](#)

¹² Id at Page 122. Section V, Recommendation 22.

2) We urge the Council to make permanent the prohibition on the use of chemical weapons and other less-than lethal munitions during First Amendment assemblies, as well as the prohibition on MPD officers wearing riot gear except when they face an immediate threat of significant bodily injury.¹³ However, to truly protect District residents, we recommend that these restrictions be expanded beyond First Amendment rallies.

3) We further urge the Council to make permanent provisions restricting District's law enforcement agencies from acquiring and using military weaponry, including requiring agencies to publish notices of requests or acquisition of any property from the federal government within 14 days of the request or acquisition and to return any such equipment that they have already acquired within 180 days of the enactment of the law. However, as we testified in October 2020 on the Comprehensive Policing Act, to make this provision enforceable, the Council should require periodic audits by an independent agency outside of law enforcement to ensure compliance, and enact penalties for failure of law enforcement agencies to comply.¹⁴ Additionally, the legislation should ban DC Police from acquiring or purchasing such weapons from private companies, and should prohibit agencies from entering into non-disclosure agreements that that prevent public transparency or oversight of their acquisition of these harmful tools.

4) We are pleased that the PRC recommends that the Council adopt legislation to bring oversight and accountability to government use of surveillance tools. Although we know about a handful of surveillance technologies MPD uses, neither the public nor the Council know the full extent of the types of surveillance tools MPD currently has, how they are procured, how they are used, and how they impact people in the District. We also do not know what/if any data retention policies MPD has in place or with what other entities, government or otherwise, the data gleaned from such technologies, is shared. The lack of oversight and transparency of such use of technology by the Metropolitan Police Department especially has serious consequences for District residents. Unchecked surveillance threatens the civil rights and civil liberties of all D.C. residents, and especially of those who are already overpoliced—including Black and Brown communities, low-income communities, Muslim communities, immigrant communities, and activist groups.

The ACLU-DC is a member Community Oversight of Surveillance-DC (COS-DC), a coalition of local and national organizations and individuals committed to bringing public oversight to how District agencies procure and use surveillance technology. We urge the Council to introduce and pass legislation that requires Council approval anytime a District agency wants to purchase, acquire, or use surveillance technology.

¹³ Id at Page 123. Section V, Recommendation 24.

¹⁴ ACLU-DC testimony on B23-882. Available at <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment#:~:text=The%20ACLU%2DDC%20has%20testified,at%20the%20hands%20of%20law.>

C) Limitations on warrant executions

The ACLU-DC strongly supports the recommendations of the PRC to permanently ban the use of no-knock warrants and to strictly limit quick-knock warrants. While MPD asserts that it does not execute no-knock warrants, this dangerous practice is still permitted by case law and the exception to the warrant requirement remains part of the District's criminal code.

Additionally, we urge the Council to amend the D.C. Code 23-524(g) and for MPD to modify General Orders to ensure that MPD officers execute search warrants lawfully, safely, and in a manner that minimizes harm to people and property.¹⁵ Specifically, the Council should require officers to comply with constitutional requirements for patting down and searching occupants; and authorize prompt compensation for damage to property.

II. Strengthening transparency, oversight, and accountability mechanisms to hold police accountable to the communities they serve.

In addition to explicitly limiting police powers to reduce harms, the most immediate action the Council can take now is to increase transparency of police practices.

A) Increasing public access to police actions and records

One of the most significant barriers to police accountability is the culture of opaqueness and resistance to transparency that permeates MPD. There are mountains of evidence of this, from MPD's refusal to comply with the NEAR Act data collection requirements for years, its denial of FOIA requests, its non-compliance with recommendations made by the Office of Police Complaints in their annual reports, and most recently, its poor response to requests for data and information from the Police Reform Commission. And as findings like that in the recently released Use of Force report by the Bromwich Group and D.C. Auditor demonstrate, a direct consequence of this resistance is the infliction of physical harm and trauma to communities.¹⁶

1) We support the PRC creation of a searchable public databases, like those that exist in New York City,¹⁷ enabling the public to easily access, for any officer, the status of open investigations, the outcome of administrative investigations, and the disciplinary action taken with respect to each act of misconduct. Lack of access to police disciplinary history has long

¹⁵ District of Columbia Police Reform Commission (PRC). "Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission." April 1, 2021. Page 112. Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>

¹⁶ The Bromwich Group LLC, "The Durability of Police Reform: The Metropolitan Police Department and Use of Force, 2008-2015," A report of the Office of the District of Columbia Auditor, (2016)

¹⁷ The NYPD Member of Service Histories can be accessed at <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page>.

been a barrier to holding officers who have engaged in repeated violations of civilian rights accountable. We strongly support the recommendation of the PRC to expand retention and public access to disciplinary records and proceedings through FOIA and other means.¹⁸

2) We also strongly support the need to amend DC's FOIA statute to increase public access to body-worn camera (BWC) footage, narrowing the personal privacy exception which MPD regularly invokes to both deny access to public records and charge exorbitant fees to redact BWC recordings.¹⁹ One problem that the report does not address, however, is MPD's practice of denying fee-waivers in FOIA requests, which continues to be a significant barrier to transparency and accountability. Under D.C. law, agencies have the discretion to provide documents free of charge or at a reduced rate where the information being sought is considered to primarily benefit the public. However, the ACLU-DC's experience is that MPD consistently denies fee waivers, abusing its discretion. The Council intended DC agencies to waive fees when furnishing information would primarily benefit the public, and DC's FOIA law should be updated to fix this.

3) Finally, with regard to body worn cameras, we urge the Council to prohibit officers from reviewing their BWC recordings or those that have been shared with them to assist in initial report writing and make permanent other provisions of the Comprehensive Policing Act regarding public release of body-worn camera footage, about which we have testified before.²⁰

B) Removing Disciplinary Authority Outside of Police

The ACLU-DC has for years testified about the need to completely move the disciplinary process out of MPD, and to significantly expand the authority and capacity of the Office of Police Complaints only to investigate complaints into police misconduct, as it currently does, but to actually impose and enforce discipline when there has been a determination of wrongdoing; two things the law does not currently authorize it to do. Putting the authority of discipline in the hands of police is a clear conflict of interest.²¹

1) First, we support the recommendation to expand the Police Complaints Board and give it the authority to review and approve MPD policies, prior to issuance, that are not purely administrative in nature.

2) We also strongly support the PRC's recommendation that OPC have the authority and resources to investigate all in-custody deaths and serious uses of force by MPD officers,

¹⁸ District of Columbia Police Reform Commission (PRC). "Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission." April 1, 2021. Section VIII, Recommendation 9, Page 176. Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>

¹⁹ Id at Page 183. Section VIII Recommendation 16.

²⁰ Id at Page 182. Section VIII, Recommendation 15.

²¹ Id at Page 163. Section VIII, Recommendation 3.

regardless of whether a complaint has been filed. OPC must also be given the statutory authority and access to relevant officer personnel records, including their entire history of complaints and internal investigations, to make informed disciplinary recommendations. We also believe that the process that the PRC proposes for removing disciplinary decisions from the sole discretion of MPD in section VIII is a good start to removing disciplinary authority outside of MPD.²²

3) Other recommendations that we urge the Council to adopt quickly include authorizing OPC to investigate anonymous complaints and to permanently extend OPC's jurisdiction to investigate cases of police misconduct that OPC discovers during other investigations.²³ From our own conversations with community members, we know that DC residents are hesitant to file complaints against police officers for fear of retaliation, and that residents often are not aware of the duties of officers and of their own rights.

C) Expand access to remedies for those whose rights have been violated by the police.

One of the greatest barriers to police accountability nationwide and in the District is the inability of civilians who are harmed by police officers' actions to hold them accountable in court. While the District has passed progressive legislation meant to improve police accountability, too many DC laws fail to include remedies for violations of these laws. The result of this is that people have no recourse when their rights have been violated and especially for police, bad actors know that they can continue to violate the rights of people without serious consequence.

1) We strongly agree with the PRC recommendations that the D.C. Council include an explicit private right of action in legislation intended to hold police officers accountable. Doing so will not only provide an important avenue for recourse to those who are harmed by the actions of law enforcement but will serve as a deterrent to violating the law.²⁴ One place where this is critically needed is in the First Amendment Assemblies Act, D.C. Code §§ 5-331.03 to 5-331.17 (the "FAAA"). That statute, enacted by the Council in 2005, provides significant protection to the rights of peaceful demonstrators in D.C. But when MPD does not follow the law, people can suffer real injuries—for example, when MPD improperly uses chemical weapons, or assaults and arrests people who don't leave an area because the police didn't give an audible dispersal order as the FAAA requires. But the act does not include an express private right of action provision which is a barrier for those who are harmed by these police actions to hold them accountable in court.

2) Currently, D.C. law requires individuals filing personal injury or other damages claims against the D.C. government (including against the Metropolitan Police Department) to "give[] notice in writing" of their claims "within six months after the injury or damage was sustained." D.C. Code § 12-309(a). Thus, for an individual to hold MPD accountable for police misconduct, they must

²² Id at Page 165, Section VIII, Recommendations 3(e)-3(j).

²³ Id at 164, Section VIII, Recommendation 3(b).

²⁴ Id at Page 185. Section VIII, Recommendation 19.

learn of this specific deadline and file a detailed written statement within six months. The PRC recommends tolling this six-month notice requirement for claimants who are incarcerated or facing criminal charges related to an arrest.²⁵ We feel that the Council should go one step further and abolish this requirement altogether because it does not serve any legitimate function. In theory, the §12-309 notice requirement exists to promote informal resolution of claims but, in practice, functions as a trap for uncounseled litigants, killing off their D.C. law claims with a quick 6-month notice requirement that most laypeople will not know about. The ACLU-DC sends notices of claim all the time and have not had a single case in the last 40 years in which the notice led to a pre-litigation resolution of claims. This provision arbitrarily closes the doors to the courthouse to people who cannot afford a lawyer. That is fundamentally at odds with creating a more equitable system of accountability for official misconduct by the police or, frankly, any other government officials.

3) And lastly, we urge the Council to pass legislation to end qualified immunity, which emboldens police officer to use excessive force and otherwise violate the constitutional rights of civilians without fear of repercussions. Under this doctrine, even if officers violate the Constitution, courts cannot hold them liable unless binding precedent previously held very similar conduct unlawful. Our colleagues at the Institute for Justice have drafted a strong bill to end qualified immunity that is based on best practices and legislation passed in Colorado, New Mexico, and New York. The ACLU-DC supports this draft legislation. We also appreciate Councilmembers Trayon White, Lewis George, and Nadeau in expressing support for ending this practice by recently introducing legislation as well.²⁶ We hope to work with them, and all other Councilmembers to end this major obstacle to police accountability.

III. Conclusion

The Police Reform Commission's report makes clear that real public safety goes beyond policing and that it cannot be achieved through a piece-meal approach. The ACLU-DC supports recommendations needed to the criminal legal system outside of policing, including restoration of jury trials for all criminal cases and criminal code reform that decriminalizes behaviors and activities that are better addressed through other avenues. We applaud the many reforms the Council passed in last year's emergency bill and look forward to working with you to incorporate additional reforms discussed today into permanent legislation.

²⁵ Id at Page 185. Section VIII, Recommendation 19

²⁶ B24-0241 – “Law Enforcement Qualified Immunity Cessation Act of 2021.” Introduced May 3, 2021. Available at <https://lims.dccouncil.us/Legislation/B24-0241>.

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
D.C. Council Committee on the Judiciary and Public Safety & Committee of the Whole
Public Hearing on
Bill 24-94 – “Bias in Threat Assessments Evaluation Amendment Act of 2021”
and Bill 24-213 – “Law Enforcement Vehicular Pursuit Reform Act of 2021”
by
Ahoefa Ananouko, Policy Associate
May 20, 2021**

Hello Councilmember Allen, Chairman Mendelson, and members of the Council. My name is Ahoefa Ananouko, and I am a Policy Associate at the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present this testimony on behalf of our more than 15,000 members and supporters across the District.

The ACLU-DC is a non-partisan, nonprofit organization committed to working not only to reverse the tide of criminalization and overincarceration, but to dismantling the systems and notions on which they were founded and continue to be undergirded. We advocate for sensible, evidence-based public safety and criminal justice policies and solutions that safeguard fundamental civil liberties and rights of District residents. This testimony will focus on Bill 24-213 – “Law Enforcement Vehicular Pursuit Reform Act of 2021”¹ and Bill 24-94 – “Bias in Threat Assessments Evaluation Amendment Act of 2021.”²

For nearly a year now, we have all become familiar with the names of Breonna Taylor, George Floyd, and countless other lives taken at the hands of police officers across the nation. Although it was their tragic murders that launched our society into a historic moment of unrest and increased our communities’ demands for justice, we should not forget that there are families right here in the District who continue to mourn and seek accountability for the tragic loss of their loved ones at the hands of the Metropolitan Police Department (MPD). We need to say *their* names— Marqueeze Alston, Karon Hylton-Brown, Jeffrey Price, Terrence Sterling, and D’Quan Young.

¹ Bill 24-213 – “Law Enforcement Vehicular Pursuit Reform Act of 2021.” Introduced by Councilmembers Lewis George, Nadeau, Cheh, R. White, Bonds, and T. White. Available at <https://lims.dccouncil.us/Legislation/B24-0213>.

² Bill 24-94 – “Bias in Threat Assessments Evaluation Amendment Act of 2021.” Introduced by Councilmembers R. White, Cheh, Nadeau, Silverman, Lewis George, and Pinto on February 22, 2021. Available at <https://lims.dccouncil.us/Legislation/B24-0094>.

Bill 24-213 – “Law Enforcement Vehicular Pursuit Reform Act of 2021”

Across the country and here in the District, laws exist that penalize members of the public for speeding. Because at a fundamental level, our society recognizes the inherent dangers speeding cars pose to anyone in their vicinity. Police chases pose the same threat. As stated by the Police Reform Commission (PRC) in its April 1 report:

“[Vehicular] pursuits are inherently dangerous and can be fatal... Because of the serious danger that [vehicular] pursuits pose, police departments across the country now strictly limit them to situations involving fleeing suspects who pose an immediate risk of killing or injuring another person. Police departments also strictly forbid intentionally using police cars to obstruct or stop fleeing vehicles.”³

In recent years, there have been at least three incidents of police chases that ended up in deaths of District residents—Terrence Sterling in 2016,⁴ Jeffrey Price in 2018⁵ and Karon Hylton-Brown⁶ in 2020. It has been reported⁷⁸ that MPD policies⁹ may have been violated in all three cases.¹⁰

³ District of Columbia Police Reform Commission (PRC). “Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission.” Page 103. April 1, 2021. Available at <https://img1.wsimg.com/blobby/go/dd0059be-3e43-42c6-a3df-ec87ac0ab3b3/DC%20Police%20Reform%20Commission%20-%20Full%20Report.pdf>.

⁴ Goncalves, D., Scott McCrary, S., and Olmos, D. “Terrence Sterling: Unarmed & Killed by Police, His Family Speaks Out.” WUSA9, June 2018. Available at <https://www.wusa9.com/article/news/local/fort-washington/terrence-sterling-unarmed-killed-by-police-his-family-speaks-out/65-453167664>.

⁵ Lambert, E. “Report Sheds Light on Dirt Bike Rider’s Deadly Crash With Police Vehicle, But Raises More Questions.” Fox 5 DC, June 15, 2018. Available at <https://www.fox5dc.com/news/report-sheds-light-on-dirt-bike-riders-deadly-crash-with-police-vehicle-but-raises-more-questions>.

⁶ NBC Washington Staff. “4 DC Officers on Leave After Karon Hylton-Brown’s Fatal Scooter Crash; Body Cam Video Released.” NBC Washington, October 29, 2020. Available at <https://www.nbcwashington.com/news/local/dc-police-to-release-video-in-karon-hylton-browns-fatal-scooter-crash/2457158/>.

⁷ Supra at 5.

⁸ Flack, E. “Internal Documents Show MPD Officers Involved in Karon Hylton’s Death May Have Violated Policy.” WUSA9, October 29, 2020. Available at <https://www.wusa9.com/article/news/local/dc/dc-police-chase-policies-karon-hylton-moped-death/65-1e7f17ea-6b2f-4fa6-a3c0-fab44b70e539>.

⁹ See Metropolitan Police Department General Order on Vehicular Pursuits (GO – OPS-301.03). Available at https://go.mpdonline.com/GO/GO_301_03.pdf.

¹⁰ Brian Trainer, the officer who shot and killed Sterling, was terminated in June 2018 after an investigation into the incident found that he had violated MPD policy. See Hermann, P. and Alexander, K.L. “D.C. Police Panel Upholds Firing of Officer Who Fatally Shot Motorcyclist in 2016.” The Washington Post, May 11, 2018. Available at https://www.washingtonpost.com/local/public-safety/dc-police-panel-upholds-firing-of-officer-who-fatally-shot-motorcyclist-in-2016/2018/05/11/269e87ea-5390-11e8-9c91-7dab596e8252_story.html.

Bill 24-213 would prohibit D.C. law enforcement officers from engaging in vehicular pursuits of an individual operating a motor vehicle—outlining requisite factors that would justify a chase—and would also prohibit the use of certain vehicular pursuit practices. The ACLU-DC strongly supports this bill and we offer a few recommendations to improve enforceability of the legislation.

Generally, the bill clearly outlines factors that must be taken into consideration before commencing a vehicular pursuit—"the officer reasonably believes that the fleeing suspect has committed or has attempted to commit a crime of violence and that the pursuit is necessary to prevent an imminent death or serious bodily injury and is not likely to put others in danger of death or serious bodily injury." The last two factors are particularly significant, especially when considering the fact that a police chase itself poses the risk of imminent death and the danger of serious injury. The second two outlined circumstances also align with the PRC's recommendations¹¹ aimed at increasing public safety and harm prevention.

One thing the bill fails to do is outline penalties for officers who do violate the law by unlawfully engaging in a vehicular pursuit, or remedies for those who are harmed as a result. The most significant action taken against any of the officers involved in the three cases mentioned in this testimony was the firing of Officer Brian Trainer in the Sterling case. Without the possibility of consequences to deter misconduct, officers will continue to defy the law and MPD policies with impunity. To that end, we also strongly recommend that the Council include a provision providing private right of action for individuals who are harmed by an officer's violation of the provisions of this legislation.

Furthermore, it would be helpful for the Council to clarify what is meant by "unlawful" in part (d) under Section 3 of the legislation, which reads: "It is unlawful for a law enforcement officer to knowingly violate this section."¹² This is the only instance the word is used, and nowhere in the legislation is there a clear definition of the term. The lack of a clear definition of what constitutes an "unlawful" pursuit, coupled with the lack of any provision outlining disciplinary actions, make this bill largely unenforceable.

Bill 24-94 – "Bias in Threat Assessments Evaluation Amendment Act of 2021"

On April 6 of this year, the Council unanimously approved PR24-107 – "Sense of the Council Regarding the Disparate Treatment of Protesters by Law Enforcement Resolution of 2021."¹³ In

¹¹ Supra at 3.

¹² Id at 2. Page 5, line 117 of the legislation.

¹³ Council of the District of Columbia. PR24-107 – "Sense of the Council Regarding the Disparate Treatment of Protesters by Law Enforcement Resolution of 2021." Approved unanimously on April 6, 2021. Available at <https://lims.dccouncil.us/Legislation/PR24-0107>.

passing this resolution, the Council recognized the double standards in how MPD and other local law enforcement entities responded to Black Lives Matter protesters during the summer 2020 protests, versus the response to white supremacist insurrectionists at the Capitol on January 6th.

B24-94 is intended to address this issue of disparate treatment and would require the Attorney General to “conduct a study to determine whether the Metropolitan Police Department engaged in biased policing when they conducted threat assessments of assemblies within the District.” The bill would also grant the Attorney General subpoena power as needed to carry out the study.

We support a deep analysis into MPD’s actions during assemblies, as it aligns with recommendations outlined in our Swann St. Report,¹⁴ which investigated MPD’s excessive use of force against protesters on June 1, 2020. However, the scope of the study mandated by B24-94 is limited in the legislative text, and we offer the following recommendations to clarify and improve the scope of the study.

Although it is important to know the number of officers deployed, the types of weapons they used, and how many people were arrested, these details alone do not give the full picture of how MPD conducts threat assessments. Equally, if not more, important are the decision points and procedures that lead to those actions. In addition to analyzing police actions at assemblies, the study should also scrutinize specific aspects of MPD’s threat assessment policies and practices. For example, who is/was responsible for assessing threats and what checks are in place? How do/did they determine the number officers that were/are deployed, etc.?

¹⁴ Recommendations stemming from questions raised in the Swann Street Report:

1. *The Council should direct MPD to develop guidance that would restrain officers’ discretion to arrest individuals for curfew violations, especially in situations when doing so may itself be dangerous. The Council should also amend the First Amendment Assemblies Act to require that police attempt to disperse an unlawful but non-violent assembly before engaging in kettling tactics or arrests.*
2. *The Council should inquire into the factual basis of MPD’s threat assessment, and into the steps MPD took to confirm its suspicions before kettling and arresting hundreds of individuals. These facts are critical to determining whether changes of law or procedure are warranted to ensure that any decision to conduct mass arrests rests on a firm factual foundation and sound policing judgment.*
3. *The Council should direct that MPD have clear protocols in place to ensure that restraints are not abused or tightened to the point where individuals’ wrists are bruised and cut, as some protesters reported, including trainings and accountability mechanisms when MPD officers violate their duty to treat arrestees fairly and provide basic provisions.*

There are also other aspects of officers' actions that the Council should consider adding to the scope of the study—namely, whether individuals arrested were treated fairly. For example, did those arrested receive basic necessities (i.e., medical attention, access to restrooms, food, water)? What types of restraints were used and were they used properly and according to District laws and regulations (e.g., ensuring that zip ties were not causing injury)?

We also recommend making definitional improvements to the bill. First, the legislation should explicitly define “biased policing”. This would ensure that the study captures different levels/types of bias that may influence how MPD assesses threat for different groups of people. And second, the legislation should also define “threat assessment.”

It is important to note that the D.C. Council should not wait for the results of this study before taking action to address the significant problems with MPD's response to First Amendment demonstrations. While we support the goals of this legislation, we urge the Council to take immediate steps to address MPD's use of force, including chemical and other non-lethal weapons, aggressive crowd control tactics, lengthy detentions, and execution of arrests that have characterized the Department's response to many First Amendment rallies over the past several years.

We hope you take these recommendations into consideration as you go through mark up of these bills and welcome any questions you may have.

Thank you for this opportunity to testify.

Good afternoon, my name is Jordan Crunkleton and I am a researcher for DC Justice Lab. Over the past year my organization and I have researched the issue of jump-outs. We have written a report emphasizing its problems, and created solutions to put an end to its use. We have also drafted a bill implementing these solutions to ensure that stops and searches are conducted in a lawful manner. I am honored to say that our report was considered by DC's police reform commission, who examined this issue in-depth and adopted many of our proposed reforms.

Before you now are bills meant to improve policing in the District. While these proposed changes are a great start, there is still work to be done, and I am here today on behalf of DC Justice Lab to ensure that jump-outs and their negative effects are not lost in translation. I am also here to advocate for legislative action that will stop jump-outs from being used in and against our community.

"Jump-outs," are a callous and aggressive stop-and-frisk tactic whereby specialized paramilitary units within MPD called "jump-out squads" target and infiltrate predominantly Black and poverty stricken neighborhoods in plain-clothes and unmarked cars, then surround, stop, and search individuals without cause. This practice was technically banned by MPD, however, whistleblower testimony has confirmed that it is still in use today. Although there are many issues with jump-outs, I want to highlight some of the most troubling. First, these tactics are discriminatory in practice. According to the National Police Foundation's 2020 report on the Narcotics and Special Investigations Division, 94% of DC residents stopped and searched by NSID in the six month data collection period were Black, despite the fact that Black residents only make up 46% of DC's total population.

Jump-outs are also violent, as this report noted that in just 6 months NSID officers used force against 59 residents, and complaints were filed against 30 of the 167 officers in the division. Of the incidents of force reported, 100% of cases involved Black residents. Although jump-outs are said to reduce gun violence, this practice has been proven to be ineffective, as this report found that 65% of NSID searches produced no contraband. The Police Reform Commission similarly noted that only 1.8% of non-traffic stops conducted between July 31, 2019 and December 31, 2020 resulted in the recovery of a gun.

Further, it should go without saying that allowing quasi-undercover officers to trail our neighbors in search of alleged criminal wrongdoing destroys community relations with MPD. It also undermines the constitutional safeguards established by the 4th amendment, as jump-outs are often conducted without probable cause or reasonable suspicion required by the constitution to search a civilian.

Between the available data, reports, and the Commission's recommendations, the Council has everything that it needs to take necessary legislative action. Today, we ask the Council to take

that action. We ask that the recommendations put forth by the Police Reform Commission and DC Justice Lab be followed, including striking pretextual bases for conducting a stop from the definition of reasonable suspicion, requiring that officers have probable cause to conduct a waistband search, and requiring that MPD officers work in uniforms and marked cars while patrolling our neighborhoods. Finally, we want to remind the Council that DC Justice Lab stands ready to assist in ensuring that there are no more jump-outs in Washington DC.

Jump-Outs Prevention Act of 2021

Purpose:

To prohibit District of Columbia law enforcement officers from engaging in unconstitutional stop-and-frisk procedures, known as “Jump Outs” by prohibiting the use of pretextual grounds for conducting a waistband search of a civilian, unless the officer can make a specific showing of probable cause that a civilian is armed and dangerous; to prohibit District of Columbia law enforcement officers from patrolling neighborhoods in plain clothes and unmarked cars to search for individuals who may be in possession of a weapon unless conducting a specific and targeted undercover operation.

Section 1 - Articulable Suspicion

- (a) None of the following, shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime:
 - (1) Presence in a high crime neighborhood, hotspot, or designated redzone;
 - (2) Time of day;
 - (3) Nervousness in the presence of law enforcement, whether known or unknown;
 - (4) Furtive gestures or movements including running or walking away;
 - (5) A generic bulge in a person’s clothing, unless the bulge reasonably appears to be a dangerous weapon; and there is probable cause to believe:
 - (A) It is illegal for the person to possess or carry the dangerous weapon; or
 - (B) The person intends to use the dangerous weapon unlawfully against another person; or
 - (C) The dangerous weapon is evidence of a crime.
- (b) In cases where the factors listed in subsection (a) of this section form the basis for searching a civilian, the search is invalid and any evidence seized as a result of that search is inadmissible against any person in a criminal trial.
- (c) It shall be unlawful for a law enforcement officer to knowingly conduct an invalid search and the Police Complaints Board shall promulgate rules to implement the provisions of this section, pursuant to D.C. Code § 5-1106(d).
- (d) Any civilian or class of civilians who suffer one or more violations of subsection (a) of this section may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:
 - (1) A declaratory judgment;
 - (2) Injunctive relief;
 - (3) Reasonable attorney’s fees and costs;
 - (4) Actual damages;
 - (5) Punitive damages; and
 - (6) Any other equitable relief which the court deems proper.

Section 2 - Limitations on Waistband Searches

- (a) Law enforcement officers shall be prohibited from demanding that a civilian lift up their shirt and show their waistband to demonstrate that the civilian is not carrying an illegal firearm, unless there is probable cause to believe that the person is carrying a dangerous weapon, and there is probable cause to believe:
 - (A) It is illegal for the person to possess or carry the dangerous weapon; or
 - (B) The person intends to use the dangerous weapon unlawfully against another person; or
 - (C) The dangerous weapon is evidence of a crime.
- (b) In cases where one or more violations of subsection (a) of this section occurs, the waistband search is invalid and any evidence seized as a result of that search is inadmissible against any person in a criminal trial.
- (c) It shall be unlawful for a law enforcement officer to knowingly conduct an invalid search and the Police Complaints Board shall promulgate rules to implement the provisions of this section, pursuant to D.C. Code § 5-1106(d).
- (d) Any civilian or class of civilians who suffer one or more violations of subsection (a) of this section may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:
 - (1) A declaratory judgment;
 - (2) Injunctive relief;
 - (3) Reasonable attorney's fees and costs;
 - (4) Actual damages;
 - (5) Punitive damages; and
 - (6) Any other equitable relief which the court deems proper.

Section 3 - Identification of MPD Personnel Patrolling District Communities

- (a) The MPD shall implement a method for enhancing the visibility to the public of the presence of officers patrolling District neighborhoods by requiring all law enforcement officers to work in full uniform and marked police cars, except as provided in subsection (b) of this section.
- (b) Subsection (a) of this section shall not apply when law enforcement officers are conducting specific and targeted undercover operations.



WRITTEN TESTIMONY

**before the DC Council Committee on the Judiciary and Public Safety
and the Committee of the Whole**

**Joint Public Hearing on the Recommendations from the Police Reform Commission
and on B24-0094, B24-0107, B24-0112, B24-0213**

by Caitlin Holbrook

DC Justice Lab

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May 20, 2021

WRITTEN TESTIMONY
before the DC Council Committee on the Judiciary and Public Safety and Committee of the Whole

Joint Public Hearing
 by Caitlin Holbrook

DC Justice Lab



Caitlin Holbrook

Hello Councilmembers, my name is Caitlin Holbrook, and I am a policy advocate and research associate at the DC Justice Lab and a resident of Ward 6. I am here to testify on behalf of the DC Justice Lab to demand meaningful oversight of correctional officers in the DC jail. These recommendations are also in Section 8 in the “Decentering Police to Improve Public Safety Report”, which was presented to the council in April 2021 by the Police Reform Commission. We recommend, to have meaningful oversight, the DC Council and Mayor make changes that include **(1) provide a deputy auditor for public safety within the Office of District of Columbia Auditor, (2) expand the responsibilities and authority of the Office of Police Complaints and the Police Complaints Board (3) Repeal the six-month deadline for prisoners to file a grievance under DC Code §12-309, and (4) end qualified immunity both for police officers and at the center of my testimony, correctional officers.**¹

As stated in the “Decentering Police Report,” no accountability mechanism in the District is operating as it should be. Establishing a deputy auditor for public safety within the Office of the District of Columbia Auditor would provide meaningful oversight and

¹ The DC Justice Lab fully endorses the statutory language regarding ending qualified immunity, stated in Keith Neely’s oral and written testimony for Institute for Justice, excluding the language directed towards Section 10, regarding DC Code §12-309, which the recommendation is changed to a full repeal rather than to toll the six-month deadline for people incarcerated in the DC jail to file a grievance.

accountability in that it would both provide a review of DC DOC correctional officer policies, procedures, and practices designed to be preventative while also providing instructions on how to respond when something has gone wrong.² A deputy auditor is imperative to improve the timeliness and quality of the investigation into the misconduct of correctional officers. Additionally, granting resources and authority to the Office of Police Complaints will empower the OPC to investigate all in-custody deaths and serious uses of force.³ The DC Council should expand the Office of Police Complaints and rename the Police Complaints Board to the DC Police Commission, which would have greater authority over policies for correctional officers in addition to police officers prior to their issuance, thus ensuring greater transparency.⁴

The DC Council should fully repeal⁵ the six-month deadline under DC Code §12-309 for a prisoner to file a claim against a DC DOC staff due to the constraints of incarceration.⁶ The six-month deadline would present a challenge for any person who has experienced trauma, or who has no legal experience, but particularly one who is operating in the physical and mental constraints of incarceration, **and even more so for the 1500 people in the DC jail who have been kept in isolation for the past 400 days.**⁷

Finally, the DC council should legislate an independent cause of action for constitutional violations that explicitly excludes the defense of qualified immunity to mitigate the effect of the federal qualified immunity doctrine in DC.⁸ **The qualified immunity doctrine protects individuals who commit extra-legal brutality and holds them at a lower standard of compliance with the law.**⁹ **An officer committing an act of brutality is operating under the belief that they must control a population they deem undesirable, undeserving, and under punished by established law.**¹⁰ This means that the act of brutality, as an extra-legal force used by a law enforcement officer, is a personal determination by that officer that an individual is not being punished enough by law. This should not be a practice overlooked in any correctional facility, but particularly

² DC Police Reform Commission, *Decentering Police to Improve Public Safety Report* (Washington DC) “Summary of Recommendations”, p. 25-26

³ DC Police Reform Commission, *Decentering Police Report*, p. 26

⁴ Ibid

⁵ The DC Justice Lab endorses the testimony made by Nassim Moshiree from the ACLU-DC, regarding the recommendation to fully appeal the six month deadline rather than toll as stated in the Police Reform Commission’s *Decentering Police to Improve Public Safety Report*.

⁶ DC Police Reform Commission, *Decentering Police to Improve Public Safety Report* (Washington DC) “Section VII: Holding Police Accountable”, p. 186-187

⁷ Jamison, Peter, “An ‘Insane’ Coronavirus Lockdown Two Miles from the Capitol, with No End in Sight” The Washington Post, April 19, 2021
<https://www.washingtonpost.com/dc-md-va/2021/04/19/dc-jail-lockdown-covid/?request-id=989dd54e-52df-451a-9937-3e2e47da6588&pml=1>

⁸ DC Reform Commission, “Decentering Police Report”, p. 188

⁹ DC Reform Commission, “Decentering Police Report”, p.187

¹⁰ Skolnick Jerome and Fyfe James, “Above the Law: Police and the Excessive Use of Force”, Free Press, New York, NY, 141219, 1993, pg. 157

in a jail where the individuals are pre-trial and whose legal punishment is undecided as much as a guilty verdict.

I and DC Justice Lab implore you to consider your complacency in these human rights violations and your duty to stand up for your constituents within the jail.



DC Justice Lab is a team of law and policy experts researching, organizing, and advocating for large-scale changes to the District's criminal legal system. We develop smarter safety solutions that are evidence-driven, community-rooted, and racially just. We aim to fully transform the District's approach to public safety and make the District a national leader in justice reform. www.dcjusticelab.org

*Cite as: 592 U. S. ____ (2020)
I Per Curiam*

SUPREME COURT OF THE UNITED STATES

*TRENT MICHAEL TAYLOR v. ROBERT RIOJAS, ET AL.
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
No. 19–1261. Decided November 2, 2020*

PER CURIAM.

Petitioner Trent Taylor is an inmate in the custody of the Texas Department of Criminal Justice. Taylor alleges that, for six full days in September 2013, correctional officers confined him in a pair of shockingly unsanitary cells.¹¹ The first cell was covered, nearly floor to ceiling, in “‘massive amounts’ of feces”: all over the floor, the ceiling, the window, the walls, and even “‘packed inside the water faucet.’” *Taylor v. Stevens*, 946 F. 3d 211, 218 (CA5 2019). Fearing that his food and water would be contaminated, Taylor did not eat or drink for nearly four days. Correctional officers then moved Taylor to a second, frigidly cold cell, which was equipped with only a clogged drain in the floor to dispose of bodily wastes. Taylor held his bladder for over 24 hours, but he eventually (and involuntarily) relieved himself, causing the drain to overflow and

¹¹ The Fifth Circuit accepted Taylor’s “verified pleadings [as] competent evidence at summary judgment.” *Taylor v. Stevens*, 946 F. 3d 211, 221 (2019). As is appropriate at the summary-judgment stage, facts that are subject to genuine dispute are viewed in the light most favorable to Taylor’s claim.

raw sewage to spill across the floor. Because the cell lacked a bunk, and because Taylor was confined without clothing, he was left to sleep naked in sewage.

The Court of Appeals for the Fifth Circuit properly held that such conditions of confinement violate the Eighth Amendment's prohibition on cruel and unusual punishment. But, based on its assessment that "[t]he law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste" "for only six days," the court concluded that the prison officials responsible for Taylor's confinement did not have "'fair warning' that their specific acts were unconstitutional." 946 F. 3d, at 222 (quoting *Hope v. Pelzer*, 536 U. S. 730, 741 (2002)).

The Fifth Circuit erred in granting the officers qualified immunity on this basis. "Qualified immunity shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." *Brosseau v. Haugen*, 543 U. S. 194, 198 (2004) (*per curiam*). But no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time. See *Hope*, 536 U. S., at 741 (explaining that "'a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question'" (quoting *United States v. Lanier*, 520 U. S. 259, 271 (1997))); 536 U. S., at 745 (holding that "[t]he obvious cruelty inherent" in putting inmates in certain wantonly "degrading and dangerous" situations provides officers "with some notice that their alleged conduct violate[s]" the Eighth Amendment). The Fifth Circuit identified no evidence that the conditions of Taylor's confinement were compelled by necessity or exigency. Nor does the summary-judgment record reveal any reason to suspect that the conditions of Taylor's confinement could not have been mitigated, either in degree or duration. And although an officer-by-officer analysis will be necessary on remand, the record suggests that at least some officers involved in Taylor's ordeal were deliberately indifferent to the conditions of his cells. See, e.g., 946 F. 3d, at 218 (one officer, upon placing Taylor in the first feces-covered cell, remarked to another that Taylor was "'going to have a long weekend'"); *ibid.*, at n. 9 (another officer, upon placing Taylor in the second cell, told Cite as: 592 U. S. ____ (2020) Taylor he hoped Taylor would "'f***ing freeze'").

Confronted with the particularly egregious facts of this case, any reasonable officer should have realized that Taylor's conditions of confinement offended the Constitution.¹² We therefore grant Taylor's petition for a writ of certiorari, vacate the judgment of the Court of Appeals for the Fifth Circuit, and remand the case for further proceedings consistent with this opinion.

¹² In holding otherwise, the Fifth Circuit noted "ambiguity in the case law" regarding whether "a time period so short [as six days] violated the Constitution." 946 F. 3d, at 222. But the case that troubled the Fifth Circuit is too dissimilar, in terms of both conditions and duration of confinement, to create any doubt about the obviousness of Taylor's right. See *Davis v. Scott*, 157 F. 3d 1003, 1004 (CA5 1998) (no Eighth Amendment violation where an inmate was detained for three days in a dirty cell and provided cleaning supplies).

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE THOMAS dissents.

Cite as: 592 U. S. ____ (2020)
1 ALITO, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

TRENT MICHAEL TAYLOR v. ROBERT RIOJAS, ET AL.
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

No. 19–1261. Decided November 2, 2020

JUSTICE ALITO, concurring in the judgment. Because the Court has granted the petition for a writ of certiorari, I will address the question that the Court has chosen to decide. But I find it hard to understand why the Court has seen fit to grant review and address that question.

I

To see why this petition is ill-suited for review, it is important to review the procedural posture of this case. Petitioner, an inmate in a Texas prison, sued multiple prison officers and asserted a variety of claims, including both the Eighth Amendment claim that the Court addresses (placing and keeping him in filthy cells) and a related Eighth Amendment claim (refusing to take him to a toilet). The District Court granted summary judgment for the defendants on all but one of petitioner’s claims under Federal Rule of Civil Procedure 54(b), which permitted petitioner to appeal the dismissed claims. On appeal, the Fifth Circuit affirmed as to all the claims at issue except the toilet-access claim. On the claim concerning the conditions of petitioner’s cells, the court held that the facts alleged in petitioner’s verified complaint were sufficient to demonstrate an Eighth Amendment violation, but it found that the officers were entitled to qualified immunity based primarily on a statement in *Hutto v. Finney*, 437 U. S. 678 (1978), and the Fifth Circuit’s decision in *Davis v. Scott*, 157 F. 3d 1003 (1998).

The Court now reverses the affirmance of summary judgment on the cell-conditions claim. Viewing the evidence in the summary judgment record in the light most favorable to petitioner, the Court holds that a reasonable corrections officer would have known that it was unconstitutional to confine petitioner under the conditions alleged. That question, which turns entirely on an interpretation of the record in one particular case, is a quintessential example of the kind that we almost never review. As stated in our Rules, “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated

rule of law,” this Court’s Rule 10. That is precisely the situation here. The Court does not dispute that the Fifth Circuit applied all the correct legal standards, but the Court simply disagrees with the Fifth Circuit’s application of those tests to the facts in a particular record. Every year, the courts of appeals decide hundreds if not thousands of cases in which it is debatable whether the evidence in a summary judgment record is just enough or not quite enough to carry the case to trial. If we began to review these decisions we would be swamped, and as a rule we do not do so.

Instead, we have well-known criteria for granting review, and they are not met here. The question that the Court decides is not one that has divided the lower courts, see this Court’s Rule 10, and today’s decision adds virtually nothing to the law going forward. The Court of Appeals held that the conditions alleged by petitioner, if proved, would violate the Eighth Amendment, and this put correctional officers in the Fifth Circuit on notice that such conditions are intolerable. Thus, even without our intervention, qualified immunity would not be available in any similar future case. We have sometimes granted review and summarily reversed in cases where it appeared that the lower court had conspicuously disregarded governing Supreme Court precedent, but that is not the situation here. On the contrary, as I explain below, it appears that the Court of Appeals erred largely because it read too much into one of our decisions.

It is not even clear that today’s decision is necessary to protect the petitioner’s interests. We are generally hesitant to grant review of non-final decisions, and there are grounds for such wariness here. If we had denied review at this time, petitioner may not have lost the opportunity to contest the grant of summary judgment on the issue of respondents’ entitlement to qualified immunity on his cell conditions claim. His case would have been remanded for trial on the claims that remained after the Fifth Circuit’s decision (one of which sought relief that appears to overlap with the relief sought on the cell-conditions claim), and if he was dissatisfied with the final judgment, he may have been able to seek review by this Court of the cell-conditions qualified immunity issue at that time. *Major League Baseball Players Assn. v. Garvey*, 532 U. S. 504, 508, n. 1 (2001) (*per curiam*). And of course, there is always the possibility that he would have been satisfied with whatever relief he obtained on the claims that went to trial.

Today’s decision does not even conclusively resolve the issue of qualified immunity on the cell-conditions claim because respondents are free to renew that defense at trial, and if the facts petitioner alleges are not ultimately established, the defense could succeed. Indeed, if the petitioner cannot prove the facts he alleges, he may not be able to show that his constitutional rights were violated.

In light of all this, it is not apparent why the Court has chosen to grant review in this case.

II

While I would not grant review on the question the Court addresses, I agree that summary judgment should not have been awarded on the issue of qualified immunity. We must view the summary judgment record in the light most favorable to petitioner, and when petitioner’s verified complaint is read in this way, a reasonable fact-finder could infer not just that the conditions in the cells in question were horrific but that respondents chose to place and keep him in those

particular cells, made no effort to have the cells cleaned, and did not explore the possibility of assignment to cells with better conditions. A reasonable corrections officer would have known that this course of conduct was unconstitutional, and the cases on which respondents rely do not show otherwise.

Although this Court stated in *Hutto* that holding a prisoner in a “filthy” cell for “a few days” “might be tolerable,” 437 U. S., at 686–687, that equivocal and unspecific dictum does not justify what petitioner alleges. There are degrees of filth, ranging from conditions that are simply unpleasant to conditions that pose a grave health risk, and the concept of “a few days” is also imprecise. In addition, the statement does not address potentially important factors, such as the necessity of placing and keeping a prisoner in a particular cell and the possibility of cleaning the cell before he is housed there or during the course of that placement. A reasonable officer could not think that this statement or the Court of Appeals’ decision in *Davis* meant that it is constitutional to place a prisoner in the filthiest cells imaginable for up to six days despite the availability of other preferable cells or despite the ability to arrange for cleaning of the cells in question.

For these reasons, I concur in the judgment.



Excerpts from Relevant Sections of the DCPRC Report

Section VII: Holding Police Accountable

1. Recommendation: The DC Council and the Mayor should create a deputy auditor for public safety within the Office of the District of Columbia Auditor.

1(a) Recommendation: The law should specify that the deputy auditor for public safety’s term be six years (DC auditor’s term is six years), subject to reappointment; that the auditor shall appoint the deputy auditor for public safety, pursuant to a nationwide search; and that the auditor can only remove the deputy auditor for public safety for cause.

1(b) Recommendation: The law should specify that the deputy auditor for public safety possess subpoena authority, authority to compel District employees to provide statements and submit to interviews, direct access to all digital/electronic MPD, HAPD, District Department of Corrections (DOC), and Office of Police Complaints (OPC) records, access to all non-digital MPD, HAPD, DOC, and OPC records, and access to all records of other District agencies.¹³ In addition, the law should require that the deputy auditor for public safety’s budget be insulated

¹³ The Office of the District of Columbia Auditor already possesses subpoena authority. See: Code of the District of Columbia § 1-301.171, <https://code.dccouncil.us/dc/council/code/sections/1-301.171.html> (accessed February 15, 2021).

from politics and sufficient for the deputy auditor for public safety to perform all its responsibilities.

1(c) Recommendation: The law should specify that the deputy auditor for public safety possess broad authority and jurisdiction, with respect to the MPD, HAPD, special police officers,¹⁴ DOC, and the PCBOPC,¹⁵ including authority to review, analyze, and make findings regarding: System-wide patterns and practices. **Any MPD, HAPD, and DOC policy, practice, or program, including constitutional policing, uses of force, use of canine, warrantless searches and seizures, use and execution of search warrants, hiring, training, promotions, internal investigations, and discipline.** Any other policy, practice, or program that affects these law enforcement agencies' integrity, transparency, and relationship with District residents or of concern to the community.

1(d) Recommendation: The law should mandate that, at least bi-annually, the deputy auditor for public safety review, analyze, and make findings regarding: MPD's and OPC's handling of misconduct complaints and cases. Timeliness and quality of all MPD and OPC administrative investigations, particularly serious uses of force and other incidents that result in death. Disciplinary process. Disciplinary appeal process (grievances, arbitration, and DC Office of Employee Appeals). Civil judgments and settlements and MPD use and handling (if any) of these judgments and settlements. MPD use and handling (if any) of adverse findings (the USAO's or a judge's) regarding MPD officer credibility, official false statements, perjury, and any prosecutor list of officers who cannot be relied on as witnesses due to credibility issues (known as Brady or Lewis list).¹⁶

- **1(d)(i) Recommendation:** The law should require that the deputy auditor for public safety and MPD work with the U.S. Attorney's Office for the District of Columbia (USAO) to develop a system for the USAO to advise the deputy auditor for public safety

¹⁴ See District of Columbia Municipal Regulations, Chapter 6A §§ 1100.1 to 1110.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).

¹⁵ Depending on the District's acceptance and implementation of recommendations two and three, the Commission recommends renaming (not eliminating) the PCB and the OPC. To prevent confusion, the report will, unless otherwise noted, refer to the Police Complaints Board and the Office of Police Complaints by their current names.

¹⁶ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Lewis v. United States*, 408 A.2d 303 (DC 1973). These cases generally require prosecutors to provide to defendants material that may be used to impeach prosecution witnesses, including prior convictions, pending investigations or criminal charges, cooperation agreements, and bad acts related to the witnesses' veracity and credibility. Some prosecutors keep a list of officers for whom they must turn over such material and/or whom prosecutors have determined are not reliable witnesses.

and MPD of adverse findings (the USAO's or a factfinder) regarding an MPD officer's credibility; or regarding a determination that the officer made false official statements or committed perjury; and that the USAO provide to MPD and the deputy auditor for public safety its Brady or Lewis list, on a quarterly basis.

1(e) Recommendation: The law should require that the deputy auditor for public safety produce an annual report on its activities and operations, and reports following each investigation, review, study, or audit; and provide these reports to the Mayor, the Council, MPD, and the PCB-OPC; and publish the reports on the Office of the DC Auditor's website, with the respective agency's response. The law should require that MPD and/or PCB-OPC be required to respond, in writing, to the deputy auditor for public safety reports' recommendations within 30 days, and that their responses must include: 1) a description of the corrective or other action the agency plans to take; 2) the basis for rejecting the Decentering Police to Improve Public Safety recommendation, in whole or in part; or 3) a request for an extension to provide substantive written responses.

- **1(e)(i) Recommendation:** With the creation of the deputy auditor for public safety, the Council and the Mayor should shift from the PCB-OPC to the deputy auditor for public safety the responsibility for (as detailed in Code of DC § 5-1104(d-2)(1):¹⁷ reviewing and reporting annually on MPD resolution of citizen complaints, the demographics of those involved in these complaints, and the proposed and actual discipline as a result of sustained citizen complaints; all MPD use of force incidents, serious use of force incidents,¹⁸ and serious physical injury incidents;¹⁹ and in-custody deaths.

1(f) Recommendations: The law should require that the deputy auditor for public safety engage in regular and sustained public outreach to inform the community and relevant law enforcement agencies about its mission, policies, and operations.

Discussion

¹⁷ Code of the District of Columbia § 5-1104(d-2)(1), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 15, 2021).

¹⁸ See Recommendation 3(a)(iii) and corresponding discussion for definition of "serious use of force," which can be found in MPD GO-RAR-901.07 (Use of Force), § III.9, effective November 3, 2017, https://go.mpdconline.com/GO/GO_901_07.pdf (accessed February 14, 2021).

¹⁹ Id., § III.8. See Recommendation 3(a)(iii) and corresponding discussion for definition of "serious physical injury."

Modeled after agencies that exist in other cities throughout the United States,²⁰ the deputy auditor of policing is designed to improve MPD's policing practices and procedures and make these practices clear and understandable to the public, thereby enhancing the legitimacy of and public trust in MPD. Extending the deputy auditor of public safety's jurisdiction to the OPC should have the same effect: revealing the strengths and weaknesses of OPC's internal case processing, improving the quality and timeliness of OPC investigations, and increasing the public's confidence in OPC's work.

Although independent auditors, inspectors general, and monitors are the most common forms of external police oversight across the country,²¹ DC currently lacks an agency empowered and dedicated to auditing MPD or the OPC. (For the sake of simplicity, this report uses the term "auditor.")

Auditors possess the capacity to provide both front-end²² and back-end accountability.²³

On the front end, they audit complaint processes and police operations and make recommendations for changing training, policies, or procedures. On the back end, auditors retrospectively examine individual incidents, administrative investigations, and the disciplinary process, determining what went wrong or right, and making recommendations for change, as appropriate. In the view of Samuel Walker, emeritus professor of criminology and criminal justice at the University of Nebraska at Omaha, recommending policy changes "is potentially the most important accountability function that any public oversight agency can perform because it is directed toward organizational change that hopefully will prevent future misconduct."²⁴ Reports that the auditors author make visible to the public details about the police department's operations. They provide the basis for informed public dialogue regarding controversial issues and police practices.²⁵

Auditors can repeatedly revisit issues they examined in the past: their "continuous review of policies, training, and supervision" can prevent "a police department from slipping backward

²⁰ Cities that have established auditors, monitors, or inspectors general dedicated to auditing and examining their police departments' operations include: Chicago, Denver (police and sheriff departments), Los Angeles, New Orleans, New York, San Jose, and Seattle. See: City of Chicago Office of the Inspector General, "Public Safety," <https://igchicago.org/about-the-office/our-office/public-safety-section/> (accessed February 13, 2021); City and County of Denver, "Office of the Independent Monitor," <https://www.denvergov.org/Government/Departments/Office-of-the-Independent-Monitor> (accessed February 13, 2021); Los Angeles Police Commission, "Office of the Inspector General—Los Angeles Police Commission," <https://www.oig.lacity.org> (accessed February 13, 2021); Independent Police Monitor, "The New Orleans Independent Police Monitor," <https://nolaipm.gov> (accessed February 13, 2021); New York City Department of Investigation, "Inspector General for the NYPD," <https://www1.nyc.gov/site/doi/offices/oignypd.page> (accessed February 13, 2021); City of San Jose, "Independent Police Auditor," <https://www.sanjoseca.gov/your-government/appointees/independent-police-auditor> (accessed February 13, 2021); Seattle.gov, "Office of Inspector General," <https://www.seattle.gov/oig> (accessed February 13, 2021).

²¹ Walker and Archbold, *The New World of Police Accountability*, 214.

²² Policing Project New York University School of Law, "Front-end Voice in Policing," <https://www.policingproject.org/front-end-landing>.

²³ See testimony of Barry Friedman, Creating a Community Commission for Public Safety and Accountability, Hearing before the Chicago City Council Committee on Public Safety, January 23, 2020, at 3-11, <https://www.policingproject.org/ccpsa-testimony> (accessed February 28, 2021).

²⁴ Walker and Archbold, *The New World of Police Accountability*, 217.

²⁵ *Id.*, 217, 232-233.

... and keep it moving forward and adopting the newest ideas and best practices.”²⁶ That the Council has, in recent years, tasked the PCB-OPC with producing an annual report on MPD’s investigation of public complaints, use of force incidents, and in-custody deaths,²⁷ and with conducting an independent review of MPD’s Narcotics and Specialized Investigations Division,²⁸ indicates that the Council is aware of the need for independent audits of MPD’s operations.

In line with robust auditor models elsewhere, the enabling legislation should give the deputy auditor for public safety a broad scope of authority, rather than a narrow list of functions that could limit the deputy auditor for public safety’s authority. In a 2020 survey, the NYU Law School Policing Project identified five auditors (Chicago, Los Angeles, New Orleans, New York, and Seattle) that possessed “broad authority to review any policy or practice that may be of interest to the public.” The reports these inspectors generals published “have in turn prompted significant policy change.”²⁹ Broad authority allows an auditor to proactively investigate issues that it deems important and to respond to the concerns of officials from the Council, MPD, or other organizations.³⁰

The Commission’s recommendations regarding the deputy auditor for public safety’s tenure, hiring, basis for removal (for cause only), subpoena authority, access to employees and records, and resources are intended to ensure that the deputy auditor possesses the power and resources needed to conduct mandatory and discretionary audits independently, while being insulated, to the extent possible, from politics.

Sunlight is said to be the best of disinfectants. Secret investigative and disciplinary processes leave the public in the dark—skeptical, doubting, and unable to hold the department or individual officers to account. ... Specifically, the MPD should, as other jurisdictions have done, make officers’ disciplinary records public.

To promote independence, the deputy auditor for public safety should be housed within the Office of the DC Auditor, which reports directly to the Council, rather than under the auspices of the Mayor, who has direct oversight of the MPD Chief and the DC inspector general. In addition, the DC auditor has demonstrated an interest, in recent years, in assessing certain

²⁶ Id., 235-236.

²⁷ Code of the District of Columbia § 5-1104(d-2)(1) (codifying provisions of DC Law 21-125, the Neighborhood Engagement Achieves Results Amendment Act of 2016), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 14, 2021).

²⁸ Code of the District of Columbia § 5-1104(d-3) (codifying provisions of DC Law 23-16, the Fiscal Year 2020 Budget Support Act of 2019), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 14, 2021).

²⁹ Policing Project New York University School of Law, “What Does Police Accountability Look Like?,” <https://www.policingproject.org/oversight> (accessed February 13, 2021).

³⁰ Walker and Archbold, *The New World of Police Accountability*, 214.

aspects of MPD. The auditor hired the Bromwich Group to assess MPD's compliance with select provisions of the 2001 memorandum of agreement with the U.S. Department of Justice, which ended in 2008. In 2016, the auditor published *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015*; ³¹ In 2017, the auditor provided an update of the implementation status of that report's recommendations.³² The auditor also issued reports regarding MPD's monitoring of demonstrations and compliance with First Amendment protections,³³ and on September 15, 2020, announced that it again contracted with the Bromwich Group to review MPD's policies, practices, and operations with respect to certain officer involved fatalities from 2018 to 2020.³⁴

Consolidating the auditor's authority over agencies such as MPD, HAPD, and DOC within a single deputy auditor for public safety should, if the deputy auditor is given adequate resources, result in comprehensive external oversight of District law enforcement.

2. Recommendation: The Council and Mayor should expand the authority of and rename the Police Complaints Board, which will continue to oversee the Office of Police Complaints, as the District of Columbia Police Commission ("DCPC").

2(a) Recommendation: The law should require that DCPC review and approve, prior to issuance (except for emergency situations) MPD policies that are not purely administrative. For policies that broadly affect the community, the DCPC should engage the community and police during the development and drafting of new policies or policy revisions, including through use of formal forums and surveys.

³¹ Office of the District of Columbia Auditor, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015* (Washington, DC: Office of the District of Columbia Auditor, January 28, 2016), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/> (accessed February 13, 2021).

³² Office of the District of Columbia Auditor, *Implementation of Recommendations for The Durability of Police Reform: the Metropolitan Police Department and Use of Force 2008-2015* (Washington, DC: Office of the District of Columbia Auditor, March 20, 2017), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/> (accessed February 13, 2021).

³³ See Office of the District of Columbia Auditor, *Metropolitan Police Monitor Nearly 2,500 Demonstrations in 2014-2016 and Report No First Amendment Inquiries* (Washington, DC: Office of the District of Columbia Auditor, July 3, 2017), <https://dcauditor.org/report/metropolitan-police-monitor-nearly-2500-demonstrations-in-2014-2016-and-report-no-first-amendment-inquiries/> (accessed February 13, 2021); Office of the District of Columbia Auditor, *The Metropolitan Police Department Complies with Surveillance Portion of First Amendment Law* (Washington, DC: Office of the District of Columbia Auditor, January 23, 2019), <https://dcauditor.org/wp-content/uploads/2019/01/MPD.Compliance.Report.1.23.19.pdf> (accessed February 13, 2021).

³⁴ Office of the District of Columbia Auditor, *Statement by the Office of the District of Columbia Auditor (ODCA) on the ODCA Review of MPD Use of Force in Officer-Involved Fatalities* (September 15, 2020), <https://dcauditor.org/report/d-c-auditor-statement-on-review-of-officer-involved-fatalities-in-the-district-of-columbia/> (accessed February 28, 2021).

2(b) Recommendation: The law should specify that DCPC have a role in setting, formulating, and/or approving MPD annual goals, and meeting quarterly with the MPD Chief to review MPD's progress in meeting these goals. MPD's achievement of these goals (emphasizing delivery of services rather than number of arrests or summonses) should be tied, at least in part, to the DCPC's assessment of MPD's success.

2(c) Recommendation: **The law should specify that DCPC have a role in establishing the process for the Mayor's selection of a new MPD Chief,** e.g., by developing a job description, and weighing in on minimum qualifications, whether the Mayor should engage a national search firm, and the DCPC's role in reviewing candidates.

2(d) Recommendation: The law should specify that, in making MPD more transparent, the DCPC must work with MPD to determine what information MPD should post to its website, subject to applicable laws (e.g., policies; detailed data on crime, arrests, citations, use of force, pedestrian and vehicle stops, and officer fatalities and injuries; layered budget information; and applicable union contracts), and that the DCPC may post such information on its website that MPD does not.

2(e) Recommendation: The law should specify that DCPC's composition consist of an odd number of **members who reflect the diversity of the District;** that members be compensated (not 100% volunteer); that individuals working for law enforcement agencies are not eligible; that members should include individuals below the age of 24; and that members should include individuals who have been directly impacted by the District's policing and/or incarceration system.

- **2(e)(i) Recommendation:** In the near-term, the Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's exclusion from the Police Complaints Board of individuals employed by law enforcement agencies. Specifically:
 - The new law should make clear that "no current affiliation with any law enforcement agency" means that no PCB member shall be currently employed by a law enforcement agency or law enforcement union.
 - The new law should make clear that individuals formerly employed by law enforcement agencies are not excluded from serving on the PCB.
- **2(e)(ii) Recommendation:** In the near-term, the Council and the Mayor should reconsider the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's expansion of the Police Complaints Board from five to nine members, based solely on appointment of one member from each of the eight DC wards and one at-large member.

- While increasing the PCB membership from five to nine makes it more likely that the board reflects the diversity of the District, geographic diversity alone will not necessarily result in a board that reflects the District's diversity.

2(f) Recommendation: The Council and Mayor should hold full and robust public hearings on expanding the authority of and renaming the Police Complaints Board, or appoint a single-issue task force devoted to fleshing out the District of Columbia Police Commission's mandate, authority, composition, and its process for selecting members.

Prior to the emergency legislation, the Police Complaint Board consisted of five members appointed by the Mayor, subject to Council confirmation. One of the five members was required to be an active member of MPD. The PCB hires the OPC's executive director and oversees the OPC, serving as the OPC's board of directors.³⁵ Together with the OPC, the PCB makes recommendations to MPD on an array of issues, largely based on reports the Council has tasked it with preparing, as well as on OPC investigations.³⁶ PCB members also play a role in the OPC complaint review process. The OPC may dismiss a complaint with the concurrence of one PCB member, if they deem it lacks merit, if the complainant refuses to cooperate with the investigation, or if the complainant refuses to participate in good faith in the mediation process.³⁷

MPD must embrace a culture of transparency and accountability, which as the President's Task Force on 21st Century Policing underscored, is essential to building trust and legitimacy in the eyes of the public.

To provide the public with a greater voice in how it's policed, the PCB, re-formulated as the DC Police Commission, would have the authority to review and approve MPD policies, prior to issuance, that are not purely administrative in nature; play a role in selecting the police chief; participate in the process of setting MPD performance goals; and help make MPD more transparent. In its new iteration, the DCPC would continue to oversee the Office of Police Complaints but would take on additional, front-end accountability responsibilities.

As the President's Task Force on 21st Century Policing concluded, the community should be involved in the process of developing and evaluating police department policies and

³⁵ Code of the District of Columbia § 5-1105, <https://code.dccouncil.us/dc/council/code/sections/5-1105.html> (accessed February 26, 2021).

³⁶ Code of the District of Columbia §§ 5-1104(d) to 5-1104(d-3), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 26, 2021). See: Office of Police Complaints, Policy Recommendations <https://policecomplaints.dc.gov/page/policy-recommendations> (accessed February 26, 2021).

³⁷ District of Columbia Municipal Regulations, Chapter 6-A21, § 2105, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf> (accessed February 25, 2021).

procedures.³⁸ Police commissions that “review police department policies and practices to ensure they are consistent with community needs” exist in Detroit, Kansas City, Los Angeles, Milwaukee, Oakland, and San Francisco. Chicago is working to establish one.³⁹ The Commission, in fact, heard from Mecole Jordan-McBride, who helped lead the Grassroots Alliance for Police Accountability’s (GAPA) effort in Chicago to create the Community Commission for Public Safety and Accountability (Ms. JordanMcBride now works as the advocacy director at the NYU Law School Policing Project). In establishing independent front-end external oversight, she emphasized the importance of giving the community a formal voice in making police policies, selecting the police chief, and appointing external oversight agency heads. She also discussed the challenges of uniting the public behind a single plan and obtaining buy-in from city officials.⁴⁰

With respect to the future DCPC’s authority, mandate, composition, and membership selection process, we urge the Council to thoroughly consider different options through hearings or a single-issue task force. Some general principles are clear: to ensure the DCPC’s independence, current law enforcement employees should not be eligible to serve as members; the DCPC’s membership should be larger than the five-member PCB to better reflect the District’s diversity (and not just geographic diversity); and its members should be paid, to reflect their experience, time, and commitment.⁴¹

3. Recommendation: The Council and Mayor should expand the jurisdiction, authority, and resources of the Office of Police Complaints (OPC).

3(a) Recommendation: The law should require that OPC conduct administrative investigations and make findings on all MPD “serious uses of force,” (as currently defined in MPD General Order 901-07, Use of MPD must embrace a culture of transparency and accountability, which as the President’s Task Force on 21st Century Policing underscored, is essential to building trust and legitimacy in the eyes of the public and in-custody deaths, regardless of whether an individual filed a complaint regarding the incident. At a minimum, the law should require that OPC conduct an independent investigation and reach dispositions on all MPD serious uses of

³⁸ The President’s Task Force on 21st Century Policing, Final Report (Washington, DC: United States Department of Justice Office of Community Oriented Policing Services, May 2015), 15 (Action Item 1.5.1), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

³⁹ Justin Lawrence, “CPAC Plan Would Cut \$600 Million from Chicago Police Budget, as Aldermen Debate Civilian Oversight of Cops,” Block Club Chicago, January 6, 2021, <https://blockclubchicago.org/2021/01/06/cpac-plan-would-cut-600-million-from-chicago-police-budget-as-aldermen-debate-civilian-oversight-of-cops/> (accessed February 26, 2021). The idea for a police commission originated with a recommendation the Chicago Police Accountability Task Force made in 2016. See: Chicago Police Accountability Task Force, Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve (Chicago, IL: Chicago Police Accountability Task Force, April 2016), 68-69, https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf (accessed February 26, 2021).

⁴⁰ Mecole Jordan-McBride, New York University School of Law Policing Project advocacy director, meeting with the DC Police Reform Commission, December 17, 2020.

⁴¹ Id.

force when an individual with “personal knowledge” files a complaint regarding the incident or under circumstances delineated in Recommendation 3(b).

- **3(a)(i) Recommendation:** In cases that OPC investigates involving serious uses of force, (as currently defined in MPD General Order 901-07, Use of Force)⁴² and in-custody deaths, MPD policy should ensure that the MPD Use of Force Board continues to review and analyze these incidents, but refrain from making final findings on whether officers complied with MPD policies; the OPC will make the final findings on whether officers complied with MPD policies.
- **3(a)(ii) Recommendation:** If the District expands the OPC’s jurisdiction to include all MPD **serious uses of force and in-custody deaths**, regardless of whether an individual has filed a complaint regarding the incident, **it should rename the Office of Police Complaints as the Office of Police Accountability.**
- **3(a)(iii) Recommendation:** The law should codify MPD “serious use of force” and “serious injury” (as currently defined in MPD General Order 901-07, Use of Force), to prevent a change in MPD policy from affecting OPC’s jurisdiction.

3(b) Recommendation: The law should specify that the OPC must investigate anonymous complaints and complaints that a non-witness files relating to unnecessary force and biased-based policing. In addition, the law should specify that the OPC may investigate anonymous complaints and complaints a non-witness files that fall within the OPC’s subject-matter jurisdiction, based upon the following factors: nature or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, and whether the OPC received other complaints regarding the incident from individuals with personal knowledge.

3(c) Recommendation: The Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020’s extension of OPC’s jurisdiction to include “evidence of abuse” or “misuse of police powers,” including those that the complainant did not allege in the complaint but that the OPC discovers during its investigation. The law should not limit, through the use of examples, the allegations of “evidence of abuse” or “misuse of police powers” that OPC discovers during its investigation and upon which it can make a finding. The legislative language should be broad enough to allow the OPC to investigate all the potential misconduct it discovers through its investigation, unbound by the complainant’s specific allegations, such as the failure to turn on body-worn cameras, false reports, false statements, and destruction or concealment of evidence. The law should specify

⁴² MPD GO-RAR-901.07 (Use of Force), § III.8-9, effective November 3, 2017, https://go.mpdconline.com/GO/GO_901_07.pdf (accessed February 14, 2021).

that when, during its investigation, the OPC discovers evidence of abuse or misuse of police powers that the complainant did not allege in the complaint, the OPC may include these allegations within the original case, rather than generating a new complaint or case, thereby increasing complaint or case numbers.

3(d) Recommendation: The Council and the Mayor should give the OPC jurisdiction to investigate special police officers as well as campus and university special police officers.

3(e) Recommendation: The Council and the Mayor should give the OPC the authority and ability to make informed disciplinary recommendations for cases in which complaint examiners sustain one or more allegations. In order to make informed disciplinary recommendations, based upon MPD's Table of Offenses and Penalties Guide, OPC should have access to an officer's training history, history of complaints and internal investigations (open and closed), and entire disciplinary history. If the MPD or HAPD Chief disagrees with OPC's recommendation, the Chief must provide written explanation for the disagreement within 30 days.

3(f) Recommendation: For cases in which complaint examiners sustain one or more allegations and the MPD or HAPD Chief rejects the OPC's disciplinary recommendation, and where the MPD or HAPD and the OPC cannot subsequently agree upon a disciplinary penalty, the Council and the Mayor should give a review panel of three complaint examiners the authority to determine the disciplinary penalty.

3(g) Recommendation: The Council and the Mayor should require the MPD Chief to respond to OPC policy recommendations within 30 days. MPD's response must include: 1) a description of the corrective or other action MPD plans to take; 2) the basis for rejecting the recommendation, in whole or in part; or 3) a request for an extension to provide substantive written responses.

3(h) Recommendation: The Council and the Mayor should ensure that OPC has direct, electronic access to all MPD digital/electronic records, the authority to incorporate these records into its case files, and the authority to utilize these records—including BWC footage—in interviews with civilians and MPD employees, as OPC deems appropriate.

3(i) Recommendation: The Council and the Mayor should ensure that OPC's budget supports the staff required to handle OPC's increased responsibilities; provides for extensive and ongoing training with respect to investigating serious uses of force and in-custody deaths and recommending and reaching disciplinary determinations; and secures the OPC's independence. To ensure this, the District should consider establishing a multi-year budget from a dedicated funding stream or statutorily linking OPC's budget or headcount to MPD's budget or headcount.

3(j) Recommendation: The OPC should develop and enhance its case management system to track and produce (not by hand), data including:

- Cases OPC closed by disposition type, e.g., number of cases OPC closes each year as adjudicated, mediated, policy training referral, rapid resolution referral, complaint withdrawn, dismissed on the merits, and dismissed due to the complainant's failure to cooperate.
- Days it takes to close (from complaint date to closure date) cases by disposition type, and average and/or median number of days it takes to close cases by disposition type.
- Reasons why cases are closed as dismissed on the merits, by category, e.g., unfounded, exonerated, insufficient facts, etc.
- Track cases referred for criminal investigation, dates cases were referred, and dates of USAO decision/declination.

Discussion

The OPC is currently responsible for processing, mediating, and investigating complaints, filed by an individual possessing personal knowledge of the alleged misconduct, against members of MPD and the HAPD involving harassment, unnecessary force, insulting or demeaning language, discriminatory treatment, retaliation for filing a complaint, and failure to wear identifying information or to identify oneself upon request.⁴³

The OPC closes cases in one of four ways: 1) referring the subject officer to complete appropriate policy training (known as policy training/rapid resolution referral); 2) mediation; 3) dismissal (on the merits and due to the complainant failing to cooperate); and 4) adjudication (through the use of complaint examiners).⁴⁴ One PCB member must concur before the OPC can dismiss a complaint.⁴⁵

When the OPC determines there is reasonable cause to believe that a subject officer engaged in misconduct, it forwards the case to one of a pool of complaint examiners.⁴⁶ The PCB must approve complaint examiners that the executive director selects for the pool.⁴⁷ The

⁴³ Code of the District of Columbia §§ 5-1101 to 5-1115, <https://code.dccouncil.us/dc/council/code/titles/5/chapters/11/subchapters/I/> (accessed February 25, 2021). An individual with “personal knowledge” is an alleged victim, any individual with personal knowledge of alleged misconduct, or the parent, legal guardian, or legal representative of either. District of Columbia Municipal Regulations, Chapter 6-A21, § 2105, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf>.

⁴⁴ District of Columbia Police Complaints Board-Office of Police Complaints, Annual Report, 18, https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report_Final.pdf (accessed February 21, 2021).

⁴⁵ District of Columbia Municipal Regulations, Chapter 6-A21, § 2110, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf>.

⁴⁶ District of Columbia Police Complaints Board-Office of Police Complaints, Annual Report, 19, https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report_Final.pdf (accessed February 26, 2021).

⁴⁷ Code of the District of Columbia § 5-1106(c), <https://code.dccouncil.us/dc/council/code/sections/5-1106.html> (accessed February 26, 2021).

complaint examiner adjudicates the case, through review of the investigative file and/or an evidentiary hearing. In a written decision, the complaint examiner makes findings of fact and determines whether the officer violated department policies. When complaint examiners sustain one or more allegations, the OPC forwards the case to MPD for discipline.⁴⁸ The MPD Chief issues a written decision memorializing the department’s disciplinary decision and the reasons for it.

If the Chief determines that the complaint examiner’s decision “clearly misapprehends the record” and “is not supported by substantial, reliable, and probative evidence in the record,” the Chief will return the case to the OPC.⁴⁹ In these instances, a panel of three complaint examiners (not including the original complaint examiner) reviews the record and issues a written decision determining whether the original complaint examiner correctly sustained the allegation(s) at issue. If the final review panel affirms one or more sustained findings, the OPC returns the case to MPD for discipline. If the final review panel overturns the original complaint examiner’s sustained finding(s), the OPC dismisses the case.⁵⁰ DC law does not provide the PCB-OPC with the authority to make disciplinary recommendations or to play a role in the disciplinary process.

OPC Jurisdiction and Authority

According to a June 2020 Pew Research Center American Trends Panel poll, 69% of the public believe police do a “poor” or “fair” job of holding officers accountable when misconduct occurs; and Black people are much more likely than White people and Latinx people to hold this view (86% compared with 65% for both White and Latinx people).⁵¹

The same survey found that 82% of Blacks, 81% of Latinx, and 71% of Whites—75% of the public overall—“strongly” or “somewhat” favor “giving civilian oversight boards power to investigate and discipline officers accused of inappropriate use of force or other misconduct.”⁵²

Given this widely held view that the police cannot police themselves, the OPC, as an agency independent from MPD, should have sufficient trained and qualified staff to investigate all in-custody deaths, and serious uses of force, regardless of whether a complaint has been filed regarding the incident. Broadening the types of cases for which the Office of Police Complaint is responsible and giving it a role in the disciplinary process should enhance public trust in the administrative investigation and discipline processes.

⁴⁸ Code of the District of Columbia §§ 5-1111(i), <https://code.dccouncil.us/dc/council/code/sections/5-1111.html> (accessed February 26, 2021).

⁴⁹ Code of the District of Columbia §§ 5-1112(c), 5-1112(g)(2), <https://code.dccouncil.us/dc/council/code/sections/5-1112.html> (accessed February 26, 2021).

⁵⁰ Code of the District of Columbia § 5-1112(h), <https://code.dccouncil.us/dc/council/code/sections/5-1112.html> (accessed February 26, 2021).

⁵¹ Pew Research Center, Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct (July 9, 2020), <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>.

⁵² *Id.*

The Chicago Office of Police Accountability (COPA), a civilian investigative body independent of the Chicago Police Department, possesses the type of jurisdiction the Commission envisions for the OPC.⁵³ Like the OPC, COPA has jurisdiction to investigate certain types of public complaints, but it can also investigate incidents involving firearm discharges, taser discharges resulting in death or serious bodily injury, and incidents involving the death or serious injury of an individual in police custody or that occurred as a result of police actions, regardless of whether a complaint has been filed.⁵⁴ In these cases, the Chicago Police Department may still conduct a review of the use of force incident to address policy, training, tactical, and equipment issues, but its Force Review Board “will not conduct a disciplinary review of any incident investigated by COPA,” since COPA is “exclusively responsible for recommending disciplinary action relating to the incident.”⁵⁵ This process is similar to the one Seattle has adopted. The Seattle Police Department’s (SPD) Force Investigation Team conducts investigations of serious uses of force, including shootings, and presents the case to and identifies issues for (without making recommendations to) the SPD’s Force Review Board. The SPD Force Review Board does not make final determinations on alleged policy violations that the Seattle Office of Police Accountability (OPA) is investigating, unless requested by the OPA director or board chair.⁵⁶

Under current DC law, the OPC possesses the authority to investigate complaints of serious uses of force.⁵⁷ **However, the Commission learned from OPC Executive Director Michael Tobin that OPC does not in fact conduct independent investigations of these complaints.** Due to insufficient resources, OPC closes complaints involving serious uses of force

⁵³ If the District adopts this Commission recommendation, it should change the name of the Office of Police Complaints to make it clear that the office’s investigations do not stem solely from public complaints.

⁵⁴ Municipal Code of Chicago § 2-78-120,

https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800 (accessed February 14, 2021).

⁵⁵ Chicago Police Department GO3-02-08 (Department Review of Use of Force), §§ II and V.D, effective January 27, 2021,

<http://directives.chicagopolice.org/directives/data/a7a57b9b-15f2592c-33815-f25c-63b922690a1aba22.pdf?hl=true> (accessed February 14, 2021). (ft 629)

⁵⁶ Seattle Police Department Manual 8.500 (Reviewing Use of Force), § 8.500-POL-4, effective September 15, 2019, <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force#8.500POL4> (accessed February 14, 2021); Seattle Police Department Force Investigation Unit Procedural Manual, at 54-56, effective September 15, 2019,

http://www.seattle.gov/Documents/Departments/Police/manual/FIT_Manual_9_15_19.pdf (accessed February 14, 2021); City of Seattle Police Accountability Ordinance 125315, §§ 3.29.100-125 (June 1, 2017), https://www.seattle.gov/Documents/Departments/OPA/Legislation/2017AccountabilityOrdinance_052217.pdf. (ft 630)

⁵⁷ MPD policy defines serious use of force as all firearm discharges, with the exception of range and training incidents, and discharges at animals; uses of force resulting in serious physical injury; head strikes with an impact weapon; uses of force resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; incidents involving MPD canine bites; uses of force involving the use of neck restraints or techniques intended to restrict a subject’s ability to breathe; and all other uses of force resulting in death. It defines serious physical injury as “any injury or illness that results in admission to the hospital or that creates a substantial risk of death, serious disfigurement, loss of consciousness, disability, a broken bone, or protracted loss or impairment of the functioning of any body part or organ. MPD GO-RAR-901.07 (Use of Force), § III.8-9, effective November 3, 2017, https://go.mpdconline.com/GO/GO_901_07.pdf (accessed February 14, 2021). (ft 631)

as “referred to the MPD,” without opening an investigation, and monitors them through the OPC executive director’s role on MPD’s Use of Force Review Board.⁵⁸ It seems doubtful that when it created the PCB and OPC, the District intended for the PCB-OPC to refer the most serious complaints involving unnecessary force to MPD, without conducting an independent review.

When the District established the OPC, one of its goals was to “establish “an effective, efficient, and fair system of independent review of citizen complaints against police officers.”⁵⁹ Even if the Council and Mayor decide against expanding OPC’s jurisdiction to investigate certain incidents absent a complaint, it should, at a minimum, require the OPC to investigate all complaints involving serious uses of force over which it already has jurisdiction, and give it the resources it needs to do so.

The law also restricts the OPC’s jurisdiction to complaints filed by individuals with personal knowledge of the incident (alleged victim or eyewitness), or their legal representative. This restriction unnecessarily prevents the OPC from opening investigations of incidents regarding which it would otherwise have jurisdiction. Though the public may have greater faith in the independent investigations OPC conducts, it is the MPD that accepts all complaints, made in writing or orally (including those made anonymously), and ensures that “every complaint is investigated.”⁶⁰ We met with representatives from the American Civil Liberties Union of the District of Columbia (ACLU DC) and the Public Defender Service for the District of Columbia (PDS). Both organizations have persuasively argued⁶¹ that OPC should have the ability to accept anonymous complaints and complaints from reporting nonwitnesses, as other independent investigative bodies in New York, San Francisco, and Seattle have.⁶² This would, as the

⁵⁸ Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, November 23, 2020; Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, January 21, 2021.

⁵⁹ Code of the District of Columbia § 5-1102 (emphasis added), <https://code.dccouncil.us/dc/council/code/sections/5-1102.html> (accessed February 14, 2021). (ft 633)

⁶⁰ MPD GO-PER-120.25 (Processing Complaints against Metropolitan Police Department Members), § II, effective October 27, 2017, https://go.mpdconline.com/GO/GO_120_25.pdf (accessed February 14, 2021). (ft 634)

⁶¹ Testimony of Monica Hopkins, executive director, American Civil Liberties Union of the District of Columbia, DC Council Committee on the Judiciary and Public Safety, Hearing on Bill 23-992, the “Comprehensive Policing and Justice Reform Amendment Act of 2020,” October 15, 2020, <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment> (last accessed February 18, 2021). See also: Testimony of Katerina Semyonova, Special Counsel to the Director on Policy and Legislation, Public Defender Service for the District of Columbia, concerning “The Comprehensive Policing and Justice Amendment Act of 2020,” October 15, 2020, 4.(ft 635)

⁶² Rules of the New York City Civilian Complaint Review Board, Title 38-A, Subchapter B, § 1-11, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-78597> (accessed February 14, 2021); San Francisco Office of Police Accountability, Complaints, <https://sfgov.org/dpa/complaints> (accessed February 14, 2021); Seattle Office of Police Accountability, Complaints, Anonymous Complaint Form, <https://www.seattle.gov/opa/complaints/file-a-complaint/anonymous-complaint-form> (accessed February 13, 2021). (ft 636)

ACLU-DC executive director testified before the Council, address concerns community members have raised that “fear of retaliation” by MPD officers “keeps them from filing complaints.”⁶³

As part of the emergency legislation, the Council granted the OPC jurisdiction to investigate evidence of abuse or misuse of police powers that OPC uncovered during its complaint investigation. This makes sense, but that authority should be general, not limited to the examples cited in the emergency legislation; and it should permit the OPC to also investigate allegations like failure to turn on body-worn cameras, false reports, false statements, and destruction or concealment of evidence.⁶⁴

Pursuant to municipal regulations, the District appoints and issues commissions to special police officers⁶⁵ and campus and university special police,⁶⁶ who wield certain police powers in connection with their employment. To ensure that these special officers comply with District policies and the District revokes and terminates their commissions as necessary, OPC should possess the authority to investigate them.

In addition to expanding the OPC’s jurisdiction in all these ways, the OPC should possess statutory authority to recommend discipline for officers proven to have engaged in misconduct and the ability to obtain relevant personnel records to make informed disciplinary recommendations. Where the OPC and MPD cannot agree on discipline, a panel of three OPC complaint examiners should be empowered to make the final disciplinary decision, which MPD would be required to impose. This is consistent with the policy recommendation the PCB-OPC itself issued in 2020.⁶⁷ As that recommendation describes, several public agencies in the United States, external to police departments, possess such authority. In Chicago, for example, the COPA possesses the authority to review the “complaint history” of an officer and make a

⁶³ Testimony of Monica Hopkins, executive director, American Civil Liberties Union of the District of Columbia, DC Council Committee on the Judiciary and Public Safety, Hearing on Bill 23-992, the “Comprehensive Policing and Justice Reform Amendment Act of 2020,” October 15, 2020, <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment> (last accessed February 18, 2021). See also: Testimony of Katerina Semyonova, Special Counsel to the Director on Policy and Legislation, Public Defender Service for the District of Columbia, concerning “The Comprehensive Policing and Justice Amendment Act of 2020,” October 15, 2020, 4.(ft 637)

⁶⁴ The emergency legislation empowers OPC to investigate evidence of abuse or misuse of police powers not alleged by the complainant in the complaint. It cites the following examples: failure to intervene in or report excessive use of force; failure to report to a supervisor another officer’s police violations; and failure to report use of force. District of Columbia Act 23-336, Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, Subtitle C, § 105(b), <https://code.dccouncil.us/dc/council/acts/23-336.html> (accessed February 21, 2021).(ft 638)

⁶⁵ See District of Columbia Municipal Regulations, Chapter 6A §§ 1100.1 to 1110.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).(ft 639)

⁶⁶ See District of Columbia Municipal Regulations, Chapter 6A §§ 1200.1 to 1208.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).(ft 640)

⁶⁷ See District of Columbia Office of Police Complaints, “Police Complaints Board Releases Report on Discipline of DC Police Officers,” press release, October 14, 2020, <https://policecomplaints.dc.gov/release/police-complaints-board-releases-report-discipline-dc-police-officers> (last accessed February 14, 2021); Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020.(ft 641)

disciplinary recommendation to the Chicago Police Department (CPD) superintendent.⁶⁸ If the COPA and the CPD cannot agree on discipline, the Chicago Police Board, an agency independent of the CPD and the COPA, reviews the record and determines whether the superintendent's response does or does not "meet its burden of overcoming the COPA [c]hief [a]dministrator's disciplinary recommendation," and rules either in favor of COPA's disciplinary position or that of the superintendent.⁶⁹ The board posts the decision, including the officer's name, on the board's website.⁷⁰

Here in DC, the PCB-OPC possesses the authority to make policy recommendations to MPD and the HAPD.⁷¹ However, as the OPC's executive director, Michael Tobin, told the Commission, the law does not currently obligate either department to respond to PCB-OPC policy recommendations. We agree with Mr. Tobin, this should change.⁷² Both departments should be required to respond to OPC's policy recommendations within 30 days, and describe the corrective actions they intend to take or their reasoning for rejecting the recommendations, in whole or in part.

OPC Resources

To effectuate its new jurisdiction and authority, the OPC needs additional resources.

Specifically, it needs unfettered access to all MPD digital and electronic records, new staff to assume these responsibilities, and time to hire and train staff. Chicago created COPA to replace its predecessor agency in October 2016; the COPA did not commence operations for 11 months.⁷³

When he met with the Commission, OPC Executive Director Michael Tobin said that OPC needed direct access to all computerized MPD records. Although OPC has direct access to MPD body-worn camera (BWC) recordings, Mr. Tobin advised the Commission that the OPC does not play these BWC recordings during interviews with members of the public or officers because it is concerned that doing so will violate MPD policies on releasing BWC recordings.⁷⁴

⁶⁸ Municipal Code of Chicago §§ 2-78-120(k)-(l) and 2-78-130, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800 (accessed February 14, 2021). (ft 642)

⁶⁹ Municipal Code of Chicago § 2-78-130, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800 (accessed February 14, 2021); District of Columbia Office of Police Complaints, Policy Recommendations, <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed March 1, 2021). (ft 643)

⁷⁰ Id.; Chicago Police Board, Police Discipline, https://www.chicago.gov/city/en/depts/cpb/provdrs/police_discipline.html (accessed February 14, 2021). (ft 644)

⁷¹ Code of the District of Columbia § 5-1104(d), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 26, 2021). (ft 645)

⁷² Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020. (ft 646)

⁷³ Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020. (ft 647)

⁷⁴ Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020; Rochelle Howard, former deputy director, Office of Police Complaints, meeting with the DC

OPC should have unfettered, direct access to all digital or electronic MPD records, possess the capacity to incorporate the records into OPC investigative files, and be able to utilize these records, such as reports and BWC recordings, during interviews OPC conducts. When an incident, in whole or in part, is captured on BWC recordings, investigators' follow-up inquiries should include playing the BWC recording and asking witnesses questions about what it depicts, confirming the identities and actions of individuals recorded, and probing the witness regarding the witness' actions at different points of the encounter.

Aside from greater access to MPD records, the District must increase the OPC's budget so that OPC can fulfill its responsibilities. Data the Commission compiled by hand, through examination of published complaint examiner decisions, reveal delays in the investigations the OPC does conduct, indicative of chronic understaffing. During calendar years 2018, 2019, and 2020, the cases that OPC complaint examiners adjudicated—including all those where the agency sustained allegations of misconduct—took an average of 323, 389, and 384 days to complete, respectively, from the date the complaint was filed to the examiner's decision.⁷⁵ As discussed above, the OPC's director conceded the agency does not currently have the resources to investigate complaints of serious use of force, over which it already has jurisdiction. In order to ensure that independent investigative agencies' budgets are adequate, cities such as Chicago, Miami, New York, Oakland, and San Francisco have linked the agencies' staffing or budgets to those of the police departments.⁷⁶ The District should implement a similar budgeting mechanism for the OPC or consider establishing a multi-year OPC budget from a dedicated funding stream.

The Commission compiled by hand data regarding completion times for adjudicated cases because the OPC case management system could not produce it. Even a basic case tracking system should be able to generate data on case completion time, by type of case closure. The District should ensure that OPC's resources include an upgrade of its case tracking system.

Police Reform Commission, December 3, 2020; Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, February 26, 2021.

⁷⁵ See District of Columbia Office of Police Complaints, Decisions, <https://policecomplaints.dc.gov/page/complaint-examiner-decisions> (accessed February 14, 2021). The Commission examined each decision to ascertain the complaint date and closure date; the Commission obtained complaint dates not included in some decisions directly from the OPC. Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, January 5, 2021.(ft 649)

⁷⁶ See Municipal Code of Chicago, § 2-78-105, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800 (accessed February 14, 2021); City of Miami Code of Ordinances § 11.5-35, https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTIITHCO_CH11.5CICOINRE (accessed February 14, 2021); New York City Charter Chapter 18-A, § 440(g), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCcharter/0-0-0-1641> (accessed February 14, 2021); Oakland City Charter § 604(e)(4), https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA (accessed February 14, 2021); San Francisco City Charter § 4.136(c), https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-52612#JD_4.136 (accessed February 14, 2021).(ft 650)

19. Recommendation: The Council should ensure that citizens are able to redress concerns about police misconduct through civil litigation, including:

- Ensuring a private right of action for violations of statutes regulating police conduct.
- Tolling the 6-month notice requirement in DC Code § 12-309 for claimants who are imprisoned or facing criminal charges related to the arrest.
- Ending qualified immunity.
- Decentering Police to Improve Public Safety

Discussion:

- Ensuring a Private Right of Action for Violations of Statutes Regulating Police Conduct

As Chief Justice Marshall observed at the founding of the Republic, “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”⁷⁷ This is a fundamental tenet of the rule of law; without it, individuals do not have the means to protect and enforce their rights, which then become no more than hortatory. Additionally, as the Supreme Court has observed, enabling suits for the violation of rights exerts an important deterrent effect on would-be violators.⁷⁸ Without that deterrent, officials who would be in a position to violate the law face no consequences for doing so and are thus less likely to restrain themselves.

Unfortunately, not all DC laws pair remedies with rights. Indeed, some of the most important protections for our most basic rights (such as those of the First Amendment Assemblies Act, or FAAA, which restrict the manner in which law enforcement can police peaceful demonstrations) have been ruled unenforceable because they lack an explicit private cause of action.⁷⁹ This is particularly ironic in the case of the FAAA, because the reason why the Council decided against including an express cause of action in the first place was that the DC Office of the Attorney General assured the Council that the Act was already privately enforceable notwithstanding the absence of an express enforcement provision.⁸⁰ Therefore, violations and potential violations of the FAAA continue.⁸¹

⁷⁷ *Marbury v. Madison*, 5 U.S. 137, 163 (1803)

⁷⁸ See, e.g., *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (plurality opinion); *Carlson v. Green*, 446 U.S. 14, 21 (1980).

⁷⁹ See Tr. of Oral Decision, *Horse v. District of Columbia*, No. 1:17-cv-01216 (DC Sept. 27, 2019), at 23; *Mahoney v. District of Columbia*, 662 F. Supp. 2d 74, 94 n.11 (DC 2009).

⁸⁰ See: DC Council Comm. on the Judiciary, Report on Bill No. 15-968 at 25 (Dec. 1, 2004) (summarizing testimony to the effect that District statutes can be enforced without an explicit right of action and that a violation would also constitute negligence per se).

⁸¹ See: Dkt. 1, *Horse v. District of Columbia*, No. 1:17-cv-01216 (DC filed June 21, 2017) (claiming violations of FAAA for unauthorized use of pepper spray, a mass arrest, and failure to issue a dispersal order, among other things); Dkt. 52, *Black Lives Matter DC v. Trump*, No. 1:20-cv-1469 (DC filed Sept. 3, 2020) (amended complaint alleging unauthorized use of pepper spray); ACLU of DC, Wash. Lawyers’ Comm. for Civil Rights & Urban Affairs, and Sidley Austin LLP, *Protest During Pandemic* 17 (Mar. 2021).

To ensure that the laws passed by the Council are honored, they must be made enforceable.

Tolling the Six-Month Notice Requirement in DC Code § 12-309 for Claimants Who Are Imprisoned or Facing Criminal Charges Related to the Arrest.

The Council should amend DC Code § 12-309 to toll the six-month notice requirement for claimants who are incarcerated or facing criminal charges related to an arrest. Currently, DC law requires individuals filing personal injury or other damages claims against the DC government (including against the Metropolitan Police Department) to “give[] notice in writing” of their claims “within six months after the injury or damage was sustained.”⁸² Thus, for an individual to hold MPD accountable for police misconduct, they must learn of this specific deadline and file a detailed written statement within six months. **This requirement is difficult enough for the average individual who has experienced traumatic police encounters and lacks legal training; it is practically insurmountable when such a person is incarcerated and accordingly lacks access to the minimal civil legal resources available even to the ordinary person. And for individuals who suffered police misconduct that resulted in pending criminal charges, complying with the six-month deadline requires claimants to risk waiving core constitutional rights.**

Tolling the six-month notice requirement for incarcerated individuals would be in step with other DC law provisions and the practices of other states. DC already recognizes generally that an otherwise-applicable statute of limitations is paused while a person is incarcerated.⁸³ 786In other words, the clock does not begin running on their claim until post-incarceration. Other states also relax filing deadlines for incarcerated people.⁸⁴ The Council should recognize that incarceration poses a serious resource and knowledge constraint impacting an individual’s ability to meet a legal notice deadline. Accordingly, the Council should toll the legal notice deadline for the period of incarceration, just like it does for statutes of limitations.

For individuals facing criminal charges related to the underlying police misconduct, **Section 12-309’s notice requirements are in tension with their Fifth Amendment privilege against self-incrimination.** Specifically, the statute requires an individual to provide “the approximate time, place, cause, and circumstances of the injury or damage” to preserve their claims against the government for violation of their rights.⁸⁵ However, in providing details necessary to give notice and maintain their civil claims, individuals with simultaneous criminal charges may risk waiving their constitutional rights in their ongoing criminal proceedings by discussing facts that relate to both.⁸⁶ Accordingly, in the absence of protection, arrested individuals who experienced a constitutional violation may face the choice of losing their civil claim for the violation by exercising their right to remain silent or waiving their Fifth

⁸² DC Code § 12-309(a).

⁸³ DC Code § 12-302(a)(3).

⁸⁴ See: Cal. Civ. Proc. Code § 352.1(a) (California); Wash. Rev. Code § 4.16.190 (Washington state).

⁸⁵ DC Code § 12-309(a).

⁸⁶ See: *Presser v. United States*, 284 F.2d 233, 235 (DC Cir. 1960) (individual who testified in congressional hearing and was later subject to criminal indictment for contempt of Congress “waived the Fifth Amendment privilege, which otherwise would have protected him”).

Amendment privilege by providing the notice needed to preserve their civil claim. The Council should amend the law to avoid imposing this unfair choice.

Ending Qualified Immunity

Another critical reform to ensure that rights do not lack remedies is to mitigate the effects of the pernicious doctrine of qualified immunity. Under that rule, people whose constitutional rights were violated cannot sue police officers or other government officials for damages unless a specific legal precedent with almost identical facts placed it “beyond debate” that the actions at issue violated the Constitution. In practice, this means that countless violations go entirely unremedied—a fundamental affront to the rule of law. Government officials have been granted immunity for egregious violations, from a school principal who ordered a strip search of a middle-school student in violation of her privacy rights,⁸⁷ to President Nixon’s attorney general, who authorized warrantless wiretaps in violation of the Fourth Amendment.⁸⁸ And, of course, the primary beneficiaries of this get-out-of-court-free card are law enforcement officers—including in cases involving the use of deadly force.⁸⁹ Whereas for criminal defendants, who usually do not have legal training, **“ignorance of the law is no excuse,” government officials under qualified immunity are held to a lower standard of compliance with the law, even though these officials are the people who have the most reason to know the law because they are responsible for enforcing it.** Most fundamentally, qualified immunity undermines constitutional rights by encouraging officers to disregard those rights. As Supreme Court Justice Sotomayor has observed, qualified immunity “sends an alarming signal to law enforcement officers and the public:” that officers “can shoot first and think later.”⁹⁰

One case here in the District that highlights the sweep and power of qualified immunity is *Black Lives Matter DC v. Trump*,⁹¹ a case seeking redress for officers’ attack on civil rights demonstrators in Lafayette Square in June 2020—an attack that included tear gas, rubber bullets, and a baton charge. Defendants in the case include MPD officers, Park Police and federal law enforcement, and former Attorney General Bill Barr. They have all sought qualified immunity for tear gassing peaceful demonstrators who broke no laws and posed no threat. According to the latest filing on behalf of several of the defendants in the case, their conduct cannot be “clearly established” as unconstitutional unless plaintiffs can point to a prior case involving “a presidential appearance, an alleged dispersal order emanating from the Attorney General himself, a city-wide curfew and emergency order, [and] a large and potentially dangerous crowd near the President.” It’s obvious that the search for an identical case is futile and should be unnecessary, but given how strictly the doctrine has been applied, the defendants’ argument might prevail.

⁸⁷ See: *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009).

⁸⁸ See: *Mitchell v. Forsyth*, 472 U.S. 511, 535 (1985).

⁸⁹ See: e.g., *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam); *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (per curiam); *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2020 (2014); *Scott v. Harris*, 550 U.S. 372, 381 (2007); *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam).

⁹⁰ *Kisela*, 138 S. Ct. at 1162 (Sotomayor, J., dissenting).

⁹¹ No. 1:20-cv-1469 (D.D.C. filed June 4, 2020).

The justifications for the doctrine have been thoroughly debunked. The civil rights statute that the Court found to contain the doctrine, the **Ku Klux Klan Act of 1871 (today known in relevant part as 42 U.S.C. § 1983), includes not a single word about any such protection;** indeed, immunity is antithetical to that law’s purpose, which was to protect formerly enslaved individuals from discrimination and officially sanctioned violence in the postwar South. The Supreme Court developed qualified immunity based on its reading of history, but recent scholarship shows that the defense has no basis in the common law.⁹² The Supreme Court’s most conservative member, Justice Thomas, agrees.⁹³ The policy justifications for qualified immunity are similarly flawed. The Court claims that the doctrine Decentering Police to Improve Public Safety 188 protects officers from paying large judgments when they make a mistake,⁹⁴ and from lawsuits that could distract them from the performance of their duties.⁹⁵ But in fact, contrary to the Court’s assumption,⁹⁶ recent empirical research demonstrates that officers virtually never pay these judgments personally.⁹⁷ As to distraction, nearly all the work in these cases is done by government lawyers, not officers themselves; more fundamentally, having to answer for constitutional violations cannot be brushed aside as a “distraction” if the Constitution is to have real meaning.

Although qualified immunity is a doctrine of federal law, the District can take a critical step to blunt its impact: **legislate an independent cause of action for constitutional violations that explicitly excludes the defense of qualified immunity.** Colorado pioneered this approach last year in the wake of nationwide protests over the killing of George Floyd by Minneapolis police in May 2020.⁹⁸ **Other states have followed its lead.⁹⁹ To deter officer misconduct, to ensure respect for Washingtonians’ constitutional rights, and to uphold the rule of law, the District should do likewise.**



DC Justice Lab is a team of law and policy experts researching, organizing, and advocating for large-scale changes to the District’s criminal legal system. We develop smarter safety solutions that are evidence-driven, community-rooted, and racially just. We aim to fully transform the District’s approach to public safety and make the District a national leader in justice reform. www.dcjusticelab.org.

⁹² See: William Baude, Is Qualified Immunity Unlawful? 106 Calif. L. Rev. 45 (2018)

⁹³ See: Baxter v. Bracey, 140 S. Ct. 1862, 1864 (2020) (Thomas, J., dissenting from denial of certiorari).

⁹⁴ Anderson v. Creighton, 483 U.S. 635, 641 (1987)

⁹⁵ Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982).

⁹⁶ See: Anderson, 483 U.S. at 641 n.3.

⁹⁷ See: Joanna C. Schwartz, Police Indemnification, 89 N.Y.U. L. Rev. 885, 938-40 (2014).

⁹⁸ See: Colo. Rev. Stat. Ann. § 13-21-131.

⁹⁹ See: Jacob Sullum, “New Mexico Could Be the Third State To Authorize Lawsuits Against Abusive Cops Without Qualified Immunity,” Reason, Feb. 19, 2021.

Testimony on Behalf of New America's Open Technology Institute
before the D.C. Council
Joint Hearing of the Committee on the Judiciary and Public Safety
and the Committee of the Whole
By Lauren Sarkesian

Thursday, May 20, 2021

Chairman Allen, Chairman Mendelson, and Councilmembers:

My name is Lauren Sarkesian, and I am a Senior Policy Counsel at New America's Open Technology Institute (OTI). Thank you for the opportunity to testify today.

OTI works to ensure that every community has equitable access to technology and its benefits. This includes working to ensure that government surveillance is subject to robust safeguards that protect rights. OTI is based here in the District, and is a member of the Community Oversight of Surveillance -- DC (COS-DC) coalition. COS-DC is a local coalition of groups working to secure legislation in the District that would provide transparency and accountability for D.C. government use of surveillance technologies.¹

First, we would like to applaud the efforts that the Council, and the D.C. Police Reform Commission, is undertaking to address police reform in the District. There are many valuable recommendations in the Commission's report that work to reimagine policing, and I look forward to seeing the Council turn them into legislation. I am here today to highlight one recommendation in particular, and urge that the Council work swiftly to adopt it.

Under Section V, Recommendation #30, the Commission recommends that the Council pass the type of legislation that our COS-DC coalition has long sought -- to ensure that decisions about whether District agencies should acquire, use, or share surveillance technologies are made with thoughtful consideration and buy-in from the public and elected lawmakers, and that the operation of the approved technologies is governed by rules that safeguard residents' rights and provide transparency.² The Commission further recommended that the legislation should, among other provisions, include the creation of a Surveillance Advisory Group, and establish a private right of action for violation of Council-approved rules for the acquisition for use of any surveillance technology.

¹ Community Oversight of Surveillance DC, <https://takectrldc.org/> (last visited May 15, 2021).

² District of Columbia Police Reform Commission, Full Report, *Decentering Police to Improve Public Safety* (April 1, 2021) at p. 125-127, <https://dccouncil.us/police-reform-commission-full-report/>.

OTI would agree that the recommendations in this section amplify COS-DC's proposed legislation by setting out in detail some of the functions of the Surveillance Technology Advisory Group that we have pushed for within the legislation. In particular, we agree that the Advisory Group should have a majority of members representing equity-focused organizations, and that there should be a private right of action built into the legislation, under which residents can seek redress for violations of the law.

The Commission also noted that the experiences of other cities make clear that there is a need to ensure that the advisory board is adequately resourced to undertake the responsibilities with which it is tasked. We hope this is something the Council will consider as well, as nobody is in a better position to make such a recommendation than the Commission members themselves, who understand what a time commitment this important civic work can be.

Most importantly, as the Commission pointed out, these recommendations emphasize the need to ensure that surveillance technologies, especially those used in policing, do not exacerbate or perpetuate racial inequity. OTI, and our coalition, is encouraged that the Commission understands the importance of reining in police use of surveillance technologies as part of larger police reform efforts. Tech tools are rapidly spreading and increasingly contribute to the disproportionate policing in the United States. Over the past two decades, police departments across the country have been acquiring, deploying, and gaining access to surveillance equipment in secret, without any notice to the public or authorization from local legislatures-- including here in the District.

Studies have shown that technologies, like facial recognition, are biased against women and people of color,³ and in fact, we now have numerous clear examples of cases in which facial recognition mismatches led to the wrongful arrests of Black men.⁴ But even as these powerful technologies improve in terms of accuracy, they pose profound threats. Police surveillance technologies are extremely privacy invasive, as they provide the government an unprecedented ability to monitor local residents over time, and accumulate vast amounts of their personal data. These technologies can infringe upon First Amendment rights and chill speech -- we have seen them widely used at protests, especially last year's Black Lives Matter protests across the country and in the District.⁵ Surveillance technologies are also prone to abuse and disproportionately used on

³ Buolamwini and Gebru. Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification (2018), <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>

⁴ Kashmir Hill, *Wrongfully Accused by an Algorithm*, NY Times (Jun. 24, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>; Kris Holt, *Facial recognition linked to a second wrongful arrest by Detroit police*, Engadget (July 10, 2020), <https://www.engadget.com/facialrecognition-false-match-wrongful-arrest-224053761.html>.

⁵ Rebecca Heilweil, *Members of Congress Want to Know More About Law Enforcement's Surveillance of Protestors*, Vox (Jun. 10, 2020), <https://www.vox.com/recode/2020/5/29/21274828/drone-minneapolis-protests-predator-surveillance-police>.

communities of color,⁶ leading to higher arrest rates in those communities and feeding the cycle of racialized policing.⁷

Nineteen jurisdictions across the country have enacted these “Community Control Over Police Surveillance” (CCOPS) bills over the past few years to provide much needed transparency and accountability for local government surveillance.⁸ The District should be next.

We *know* that MPD uses facial recognition technology, cell-site simulators, and automated license plate readers, among other surveillance tools.⁹ But we lack complete information about MPD’s technologies, and the policies that govern their use.

We heard Professor Christy Lopez testify regarding the “culture of opaqueness in MPD” today -- an issue that Councilmember Silverman also emphasized. This problem is especially true of police technologies, and is exactly what our legislation works to combat, by bringing some much-needed transparency to their use. In fact, in Appendix B of the Commission’s Report, where the Commission details its data requests to MPD and whether or not they were fulfilled, we can see that the Commission asked MPD for data regarding which surveillance technologies they use -- a data request that was unfulfilled.¹⁰ Because of the very real threats they pose, surveillance technologies should not be funded, acquired, or used without at least community input and very clear, specific approval by the Council.

⁶ See e.g., Brian Barret, *The Baltimore PD’s Race Bias Extends to High-Tech Spying, Too*, Wired (Aug. 16, 2016), <https://www.wired.com/2016/08/baltimore-pds-race-bias-extends-high-tech-spying/>; Adam Goldman and Matt Apuzzo, *NYPD Defends Tactics over Mosque Spying; Records Reveal New Details on Muslim Surveillance*, Huffington Post (Feb. 25, 2012), http://www.huffingtonpost.com/2012/02/24/nypd-defends-tactics-over_n_1298997.html;

Dave Mass & Jeremy Gillula, *What You Can Learn From Oakland’s Raw ALPR Data*, EFF (Jan. 21, 2015), <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

⁷ See Rashida Richardson, Jason Schultz & and Kate Crawford, *DIRTY DATA, BAD PREDICTIONS: HOW CIVIL RIGHTS VIOLATIONS IMPACT POLICE DATA, PREDICTIVE POLICING SYSTEMS, AND JUSTICE* (Feb. 13, 2019), 94 N.Y.U. L. REV. ONLINE 192 (2019), available at SSRN:

<https://ssrn.com/abstract=3333423> (discussion of predictive policing technology’s threats to rights resulting from the software perpetuating existing and historic racialized policing).

⁸ COMMUNITY CONTROL OVER POLICE SURVEILLANCE, ACLU (last visited Oct. 16, 2020), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>; Mailyn Fidler, *Fourteen Places Have Passed Local Surveillance Laws. Here’s How They’re Doing*, Lawfare Blog, Sept. 3, 2020, <https://www.lawfareblog.com/fourteen-places-have-passed-local-surveillance-laws-heres-how-theyre-doing>.

⁹ See e.g., Letter from Chief of Police Cathy L. Lanier to Councilmember Charles Allen, (March 2, 2020), <https://dcccouncil.us/wp-content/uploads/2020/03/JPS-Performance-Oversight-Responses-2020-MPD.pdf> (confirming the Metropolitan Police Department’s use of facial recognition technology, automatic license plate readers and cell site simulators in response to Committee and questions); see also, Lauren Sarkesian and Maria Angel, *Debate on Police Surveillance Technologies in D.C. Is Long Overdue* (Sept. 10, 2020), <https://www.newamerica.org/oti/blog/debate-police-surveillance-technologies-dc-long-overdue/>.

¹⁰ District of Columbia Police Reform Commission, Full Report, *Decentering Police to Improve Public Safety* (April 1, 2021), Appendix B, at p. 201, <https://dcccouncil.us/police-reform-commission-full-report/>.

This legislation would ensure that tough decisions surrounding police technologies are shared between the government and the community, and would set up clear processes to safeguard residents' rights. These processes, and the transparency they would bring to our policing, could therefore ensure that we think carefully about how we invest in our community's public safety, and could also help to build trust between the community and police— goals we know the Council shares.

So I would like to thank you, Chairman Allen, for your commitment to bringing forth this important legislation, and for your ongoing engagement with the COS-DC coalition. Police surveillance technologies work to *expand* the presence of police in the District, and as we discuss *decentering* police to improve public safety, we think this work is a crucial part of it.

Accordingly, we ask that the Committee move forward this surveillance legislation as soon as possible as part of your comprehensive police reform efforts. Both OTI and our COS-DC coalition stand ready to help in these matters.

Thank you.

Testimony of Virginia A. Spatz

to the DC Council Joint Public Hearing, May 20, 2021
on

The Recommendations of the D.C. Police Reform Commission

B24-0094, The “Bias in Threat Assessments Evaluation Amendment Act of 2021”

B24-017, The “Metropolitan Police Department... Act of 2021”

B24-0112, The “White Supremacy in Policing Prevention Act of 2021”

B24-0213, The “Law Enforcement Vehicular Pursuit Reform Act of 2021”

SHORT VERSION

Thank you for this hearing and the opportunity to testify. I am Virginia Spatz, a long-time DC resident.

I testified last year regarding difficulties in filing a complaint against a special police officer (SPO) in DC. I resubmit that testimony and bring an update. My story is about website minutia and may not seem important. But websites are a crucial portal for public interaction with an agency, especially during pandemic restrictions. And, after nearly a year of changes to the websites of DCRA's Occupational and Professional Licensing Agency (OPLA) and MPD's Special Operations Management Branch (SOMB), the District of Columbia STILL fails to post a complaint procedure for incidents involving SPOs.

The text version of my testimony includes details -- with links and screen shots for documentation -- of the whole timeline of changes. The current situation is as follows:

MPD's SOMB page currently links for special police information to a non-existent Wordpress site that OPLA was previously using instead of a dc.gov site.

There is a new security node on the DCRA website. It is no longer linked to or from the SOMB page, and the non-functional "File a Complaint" links that I detailed in October 2020 are gone. In their place is a form meant for contract disputes.

There is no suggestion of a complaint process on the website or the form. No person or office to contact. No phone number. Just an instruction at the top of the form warning consumers to include copies but not original contracts, certifications, or other legal documents.

If this form is intended to report misconduct or violence on the part of an officer or a special police firm, it is cruelly inappropriate. If this form is intended for contract dispute, perhaps it serves its purpose. In that case, there is STILL no way to report a SPO misconduct.

I urge Council members to look into this situation to determine whether this failure is the result of incompetence or apathy or part of a deliberate attempt at misdirection to avoid complaints about SPOs. Regardless of the cause, the public must have access to a complaint process regarding special police.

DETAILED TESTIMONY

The DC Police Reform Commission includes recommendations on improving transparency and accountability around Special Police Officers. Their April 2021 report references a determination by the Judiciary and Public Safety Committee itself that “investigations into complaints against Special Police Officers are inconsistently conducted and enforced under current regulations that split responsibility between MPD, DCRA, and even the company where the Special Police Officer is employed.” Their report also cites journalism about the current lack of record-keeping when complaints are filed.

-- See *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission*, p.125

NOTE: Link at footnote 466 no longer works, but there is an archived version of the article: Natalie Delgadillo, “MPD Doesn’t Keep Records of Complaints Against the City’s 7,500 Special Police Officers,” DCist, June 4, 2020. <https://web.archive.org/web/20201125214343/https://dcist.com/story/19/06/04/mpd-doesnt-keep-records-of-complaints-against-the-citys-7500-special-police-officers/>

I resubmit the portion of my October 2020 testimony regarding difficulties in filing a complaint against a special police officer (SPO) in DC and provide an update. This testimony is primarily focused on the websites of DCRA's Occupational and Professional Licensing Agency (OPLA) and MPD's Special Operations Management Branch (SOMB).

SOMB is found here -- <https://mpdc.dc.gov/page/security-officers-management-branch-somb>

It contains a link to www.dcopla.org which worked last year but now returns "404 Not Found"

Although it is now linked from SOMB, www.dcopla.com now redirects to DCRA

<https://dcra.dc.gov/professional-licensing>

DC OPLA is currently found here -- <https://dcra.dc.gov/node/1423896>

last year, DC OPLA was using a Wordpress site -- www.DCOPLA.org

the latter is now gone but can be found via Internet Archive here --

<https://web.archive.org/web/20201022035840/https://www.dcopla.com/security/>

The DCOPLA site offered two "File a Complaint" options, both linking to SOMB's page, which then contained, and still contains, no information about filing a complaint.



<<“File a Complaint” button here goes to SOMB page linked above, where no complaint filing information is found

<<This “File a Complaint” link under “Documents and Forms” goes to the same SOMB page.

[Video version on FB](#) and [permalink](#).

Update 10/14/20: status of pages unchanged.

Image is from this blog post -- <https://spodatadc.org/2020/06/29/special-police-and-complaints/>

TIMELINE

PROLOGUE 2020: NO WAY TO FILE A COMPLAINT

In June 2020, I discovered that neither the webpage for MPD's Special Operations Management Branch (SOMB), which oversees SPOs, nor the Wordpress site then used by DC's Occupational and Professional Licensing Agency (DC OPLA) offered any way to file a complaint against SPOs.

TESTIMONY October 15 (Attachment A)

I testified to the Judiciary and Public Safety Committee about the web problem, along with the disappointing results of my direct queries to SOMB about filing a complaint.

POST-HEARING CHANGE: Wordpress Site Gone (Attachment B)

In late October of 2020, the Wordpress site DC OPLA had been using disappeared. According to WayBack Machine at The Internet Archive, the last time the website was found was October 28, 2020.

UPDATE April 9, 2021: Blog post (Attachment C)

After a delay of some months -- monitoring DC agencies is not my job -- I returned to investigating the SPO complaint filing situation. That's when I discovered that the DC OPLA site hosted by Wordpress was gone, although MPD's SOMB page continues to link to it (as of May 19).

There was, however, a new security node at DCRA -- dcra.dc.gov/security site -- which I found via another route. It is not linked with the SOMB site at this point.

On April 9, there was STILL NO WAY to file a complaint against a special police officer. I posted an update on the SPOdata blog, noting the continued lack of complaint filing options.

LATE APRIL: New Complaint Form (Attachment D)

By the end of the month, there was a new live link on the dcra.dc.gov/security site: Under "Consumer," there is now a link labeled "File a Complaint or Issue" which provides a downloadable PDF form.

Neither the form itself nor the website (or the FAQ document) offer any suggestion of a complaint process. There is no person or office to contact. Not even a phone number. Just a PDF form with an email and a fax number in the bottom left corner (and a 2015 revision date).

Instructions on the form read:

Please fill out the Complaint form as thoroughly as possible. Additional documentation supporting your complaint should be attached and submitted with this form. Documentation may include copies of contracts, certifications, or other legal documents. Do not submit original documents.

I cannot testify to the efficacy of such a form for a contract dispute. It is clearly inappropriate for any kind of report regarding SPO behavior.

In short: After nearly a year of changes to the websites of OPLA and SOMB, the District of Columbia STILL fails to post a complaint procedure for incidents involving SPOs.

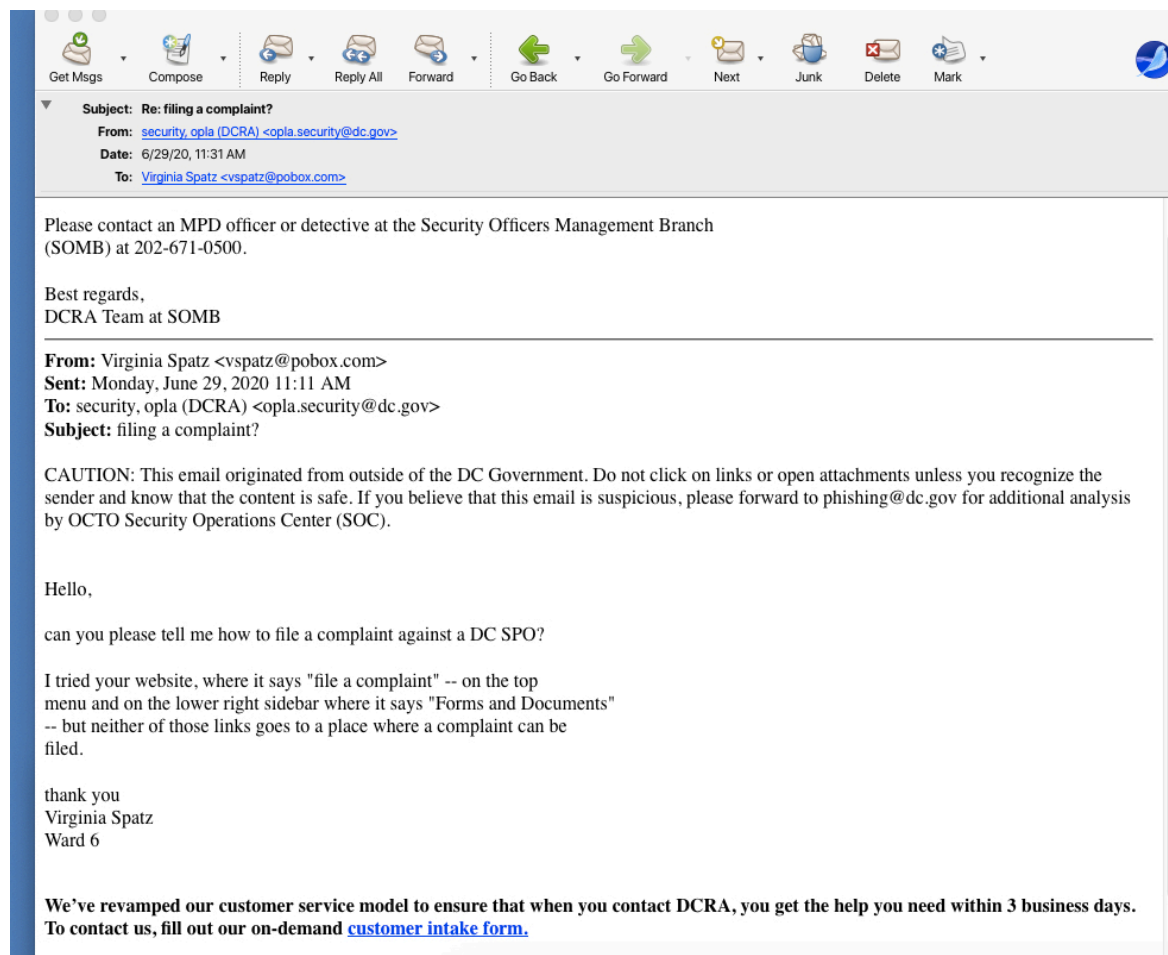
Finally, we need to disarm special police, and it is crucial to address the current dysfunction which makes filing a complaint against a special police officer nearly impossible.

What follows is an explanation of the current complaint-filing situation:

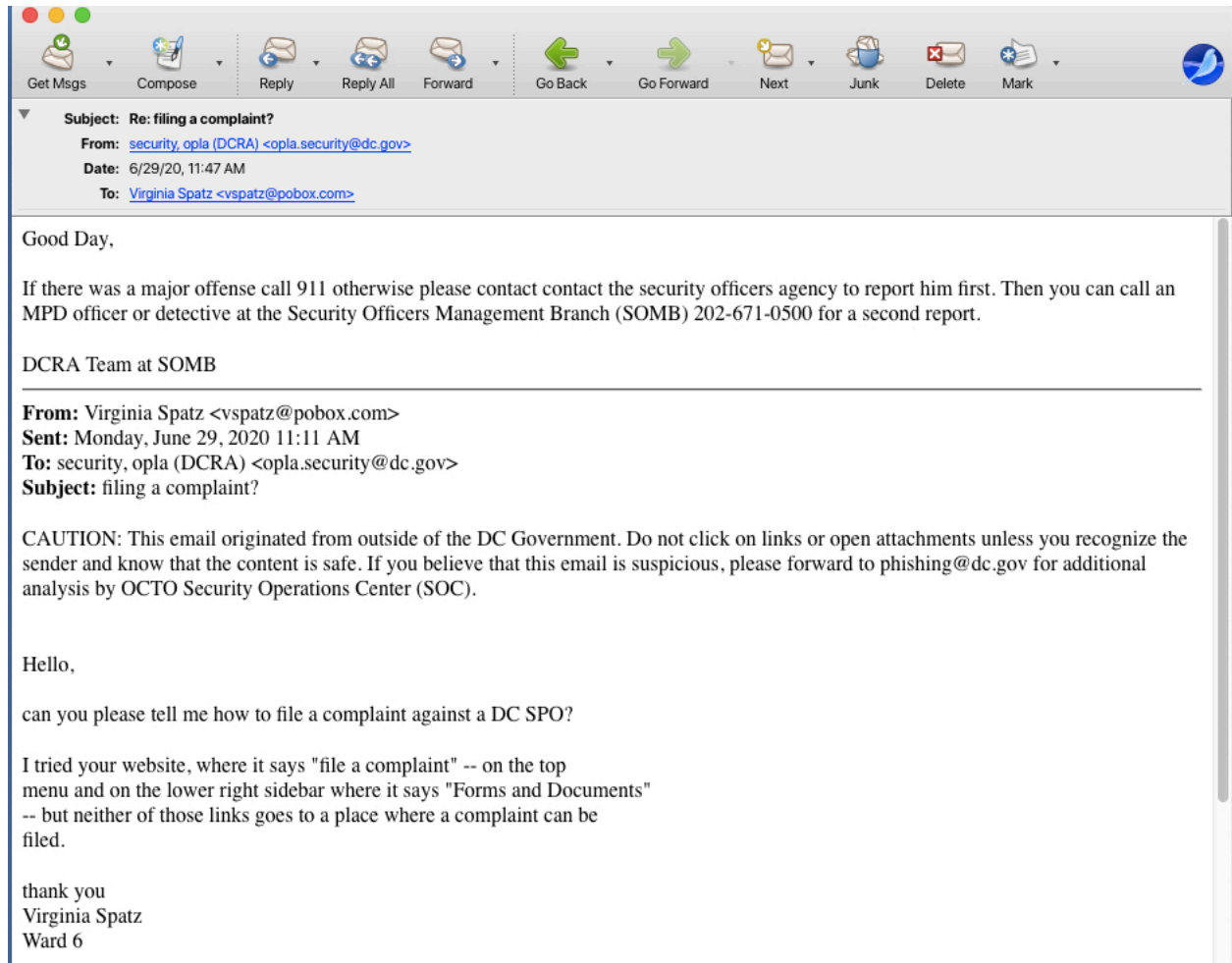
The video at this website shows how the buttons that claim one can "file a complaint" against a Special Police Officer lead to a page with no possibility of fulfilling that action. I made this little video just to show the situation -- <https://spodatadc.org/2020/06/29/special-police-and-complaints/> -- that was back in June. I recently checked in October and nothing had changed.

I also inquired of the agencies involved back in June and was given the following answers.

This was the first --



About fifteen minutes later, another arrived (next page) --



Neither response addresses the dysfunction of the website or the fact that the general public has no way to know what to do based on what information is provided.

Neither responses addresses what might have been the active trauma of someone who'd been abused by an SPO or witnessed such behavior. As it happens, I was just inquiring as part of a sort of research effort -- and maybe the writer could sense that this was not an emergency or a traumatic situation. But I doubt that. So much is in need of overhaul.

Beverly Smith, mother of Alonzo Smith, who was killed by Special Police Officers in the fall of 2015, and I worked together to try to make another portal for collecting information from those who cannot navigate this craziness and/or would not feel safe to report an SPO to MPD.

The fact that there is no way to file a complaint means there is also slim chance for any kind of accountability.

Thank you for the opportunity to testify. I am happy to answer further questions. And I urge the Committee to produce much stronger legislation. Soon.

Attachment B for V. Spatz testimony May 20, 2021



INTERNET ARCHIVE Explore more than 554 billion web pages saved over time

DONATE

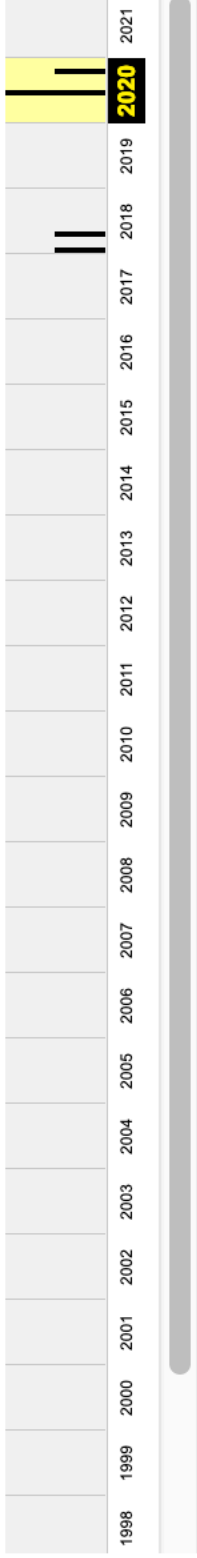
http://www.dcopla.org/security

Results: 50 100 500

Calendar • Collections • Changes • Summary • Site Map

Saved 5 times between January 23, 2018 and October 28, 2020.

<<<
DCOPLA.org/
security now
returns "404
Not Found!"
message.
<<<



JAN							FEB							MAR							APR						
1	2	3	4											1	2	3	4	5	6	7							
5	6	7	8	9	10	11	2	3	4	5	6	7	8	8	9	10	11	12	13	14	5	6	7	8	9	10	11
12	13	14	15	16	17	18	9	10	11	12	13	14	15	15	16	17	18	19	20	21	12	13	14	15	16	17	18
19	20	21	22	23	24	25	16	17	18	19	20	21	22	22	23	24	25	26	27	28	19	20	21	22	23	24	25
26	27	28	29	30	31		23	24	25	26	27	28	29	29	30	31					26	27	28	29	30		

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31																					30	31					

SEP							OCT							NOV							DEC						
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							25	26	27	28	29	30	31	29	30						27	28	29	30	31		

Last instance of
DCOPLA.org /security
was found Oct 28, 2020 >>>

Attachment C

Special Police Complaints: 2021 Update

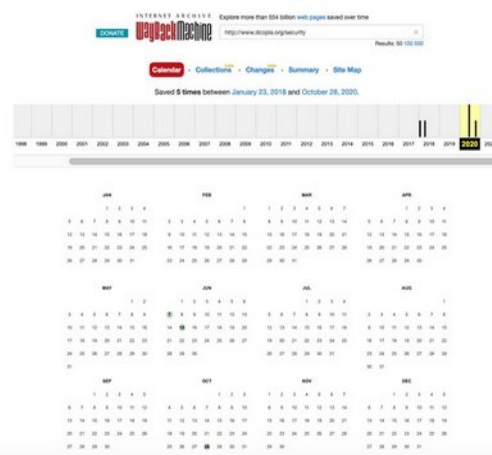
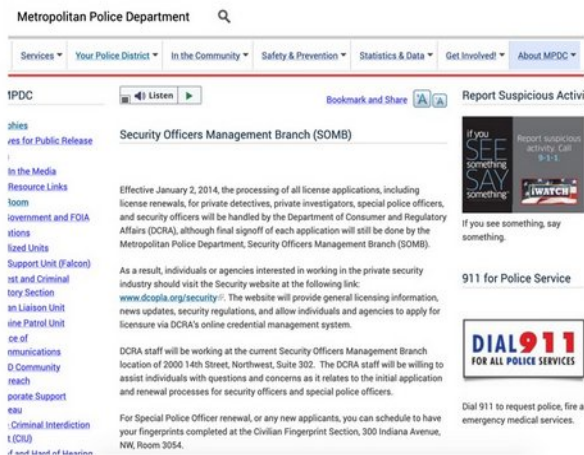
Content here and at <https://spodatadc.org/2021/04/09/special-police-complaints-2021-update/>



On October 15, 2020, Beverly Smith and Virginia Spatz testified to the DC Council about the difficulty of filing a complaint against special police officers in DC. (Files below.) Shortly thereafter, the entire “DCOPLA” website, referenced in that testimony, was removed. (Internet Archive shows the referenced content as last seen on October 28, 2020; the site now returns “404 Not Found” error message.)

DC’s [Security Officers Management Branch](#) STILL LINKS to the non-existent site, however (screen shot below just for the record), and a newer DCRA page for [occupational and professional licensing](#) is not linked anywhere on SOMB page.

Neither the SOMB nor the DCRA page now offer any options, however confusing, for filing a complaint.



Left: screenshot, 4/9/21, from DC MPD’s SOMB showing link to <http://www.dcopla.org/security>. Right: Wayback Machine screenshot showing last <http://www.dcopla.org> instance on October 28, 2020.

UPDATE 5/19/21: As of late April, a link to a PDF complaint form has been added at [this link](#): Look under “Consumer” and click on the hotlink to download a PDF form. This is a form for documenting a contract dispute of some kind. It is NOT SUITABLE for any kind of complaint regarding violence or misuse of power on the part of an SPO.

NOTE:

Some weeks later, upon revisiting the DC OPLA site and finding the PDF complaint form, I thought perhaps I had missed the complaint form on my April 9 visit. However, this archived version of the page shows that the "Consumer" menu item previously included the words "File a Complaint" without any link.

Internet Archive

Wayback Machine

<https://dcra.dc.gov/node/1423896>

4 captures

7 Aug 2020 - 28 Apr 2021

Go

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2020

2021

2022

of a period time for which the Mayor has declared a public health emergency.

1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), the Mayor, may:

1. Prospectively or retroactively extend the validity of a license, registration, permit, or authorization, including drivers licenses, vehicle registrations, professional licenses, registrations, and certifications;
2. Waive the deadlines for filings, and waive fees, fines, and penalties associated with the failure to timely renew a license, registration, permit, or other authorization or to timely submit a filing; or
3. Extend or waive the deadline by which action is required to be taken by the executive branch of the District government or by which an approval or disapproval is deemed to have occurred based on inaction by the executive branch of the District government.

General Information

+

Applicant

+

Licensee

+

Consumer

—

• [License Lookup](#)

• [File a Complaint](#)

Calendar

+

Attachment D — V Spatz Testimony



Complaint Form

Please fill out the Complaint form as thoroughly as possible. Additional documentation supporting your complaint should be attached and submitted with this form. Documentation may include copies of contracts, certifications, or other legal documents. Do not submit original documents.

Complaint Filed By

Name _____ Company _____

Address _____ City _____ State _____ Zip Code _____

Phone _____ (work) _____ (Mobile) _____ (Home) _____

E-Email _____ Date _____

Complaint Filed Against

Name _____ Company _____

Address _____ City _____ State _____ Zip Code _____

Phone _____ (work) _____ (Mobile) _____ (Home) _____

E-Email _____ Date _____

Nature of Complaint

Date(s) of violation occurred _____ Location violation occurred _____

Please describe the complaint below. Attach additional pages with complaint form if needed.

Return completed complaint form to:	Office Use Only	
E-Mail dcra.dcaopla@dc.gov	Date Received	Date Completed
Fax (202)698-4329		
Mail Department of Consumer and Regulatory Affairs Occupational and Professional Licensing 1100 4 th Street SW Suite 500E Washington DC 20024		

Testimony of 4D04 Advisory Neighborhood Commissioner Zachary Israel

Council of the District of Columbia Committee on the Judiciary and Public Safety & Committee of the Whole

Public Hearing on The Recommendations of the D.C. Police Reform Commission and Four Other Pieces of Legislation Related to the Metropolitan Police Department

Thursday, May 20, 2021

Dear Chair Allen, Chair Mendelson, and Members of the Council of the District of Columbia:

Thank you for holding this critically important hearing today. My name is Zach Israel and I represent Single Member District 4D04, which includes parts of Petworth and Brightwood Park in Ward 4.

I strongly support Ward 4 Councilmember Janeese Lewis George's **Law Enforcement Vehicular Pursuit Reform Act of 2021**, which would prohibit MPD officers from engaging in vehicular pursuits, unless the officer reasonably believes that the fleeing suspect has committed or has attempted to commit a crime of violence and that the pursuit is necessary to prevent an imminent death or serious bodily injury and is not likely to put others in danger. Had this bill been enacted and in effect back in late October 2020, when Metropolitan Police Department (MPD) officers pursued Karon Hylton-Brown through my SMD while he was driving a moped on the sidewalk, he very well may still be alive and with us today. Karon's killing was a tragedy which could have been avoided had MPD not escalated its actions into a full-scale pursuit.

This issue connects with one of the D.C. Police Reform Commission's recommendations, specifically the recommendation to transfer authority to enforce traffic violations that do not imminently threaten public safety from MPD to the Department of Transportation. I strongly urge the Council to adopt this recommendation so that we avoid situations in the future similar to what happened to Karon Hylton-Brown. Additionally, the Council should:

- Require DDOT to hire and train qualified employees to properly enforce traffic and vehicle regulations;
- Prohibit traffic stops—whether by DDOT or MPD—based solely on the alleged violation of vehicle operation infractions that are not an immediate threat to public safety; and
- Require either repeal or revision of traffic and vehicle regulations whose violation does not threaten public safety.

While I broadly support many of the recommendations offered by the D.C. Police Reform Commission, I would like to note one more that I believe the DC Council should enact via legislation as soon as possible.

- The recommendation stating that “In cases involving potential criminal charges against an officer, the Council and the Mayor should give the Office of Police Complaints (OPC)—and MPD should revise its rules to give itself—authority, as appropriate, to interview the subject officer(s) and/or complete administrative investigations, even if a prosecutorial decision is pending. [...] Specifically, in cases involving conduct that may be criminal in nature that the OPC is obligated to refer to the U.S. Attorney’s office, the Council and Mayor should revise the DC Code and require that the OPC process the complaint and complete all possible investigative steps while potential criminal charges are being considered; once the prosecutor has issued a delineation letter, the OPC should then promptly interview subject officers.”

Nearly seven months after Karon Hylton-Brown’s death in late October 2020, MPD has refused to provide any updates regarding the incident nor any potential charges or punishments against the officers involved. At every ANC meeting I have attended as a Commissioner thus far this year, we have asked the MPD reps for additional status updates on this matter and have been told nothing. This is completely unacceptable and Karon’s family deserves better. If we truly want to bring about justice in this circumstance, the DC Council must enact this recommendation as expeditiously as possible.

Lastly, I would like to note that I also support, and encourage the Council to pass, the other three bills discussed during today’s hearing:

- **The White Supremacy in Policing Prevention Act of 2021**
- **The Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021;** and
- **The Bias in Threat Assessments Evaluation Amendment Act of 2021**

Thank you and I would be happy to answer any questions you may have.

Written Testimony of Keith Neely
Attorney
Institute for Justice
May 20, 2021

Committee on the Judiciary & Public Safety
and
Committee of the Whole
Joint Hearing on the Recommendations of the D.C. Police Reform
Commission

My name is Keith Neely, and I am an attorney at the Institute for Justice. IJ is a nonprofit law firm that works all over the country and here in the District of Columbia to defend individual rights.

Thank you for the opportunity to testify regarding the findings and recommendations of the Police Reform Commission.

My testimony today will focus on the Commission's recommendation to provide a remedy for police misconduct through civil litigation by ending the doctrine of qualified immunity. Ending qualified immunity is an important solution not just for police misconduct, but for government misconduct generally.

In support of this recommendation and as an exhibit to my testimony, I include model legislation designed to end qualified immunity in the District of Columbia for all government workers. This model legislation was produced with input from the ACLU of D.C. and the D.C. Justice Lab. It ends qualified immunity by:

1. Barring the defense of qualified immunity;
2. Creating a new cause of action in the District of Columbia for violations of a person's constitutional rights;
3. Holding the government employer liable *instead of* the individual officer;¹ and
4. Empowering the government employer to fire the bad-acting officer, notwithstanding any administrative termination proceedings to which the officer may otherwise be entitled.

By holding the D.C. government responsible for the constitutional violations of its employees, it renumerates victims of government misconduct. Victims and their families currently bear the costs of constitutional violations when they do not have a remedy to be made whole.

¹ Ending qualified immunity through the imposition of municipal liability is the same approach taken recently by the State of New Mexico and New York City.

This model also offers a fiscally responsible way for the District of Columbia to end qualified immunity. By empowering the D.C. government to fire the bad-acting employees, it reduces costs by eliminating the repeat offenders that cause the majority of constitutional violations. And it creates the financial incentives for government agencies to adopt better hiring, training, and supervising policies, which would only decrease these costs further.

In conjunction with the thoughtful legislation recently proposed by Councilmembers George, Nadeau, and White, this model provides a strong starting point for discussions on how to turn the Commission's recommendations on qualified immunity into functioning legislation.

1 _____
2 Councilmember [NAME]
3

4 A BILL
5 _____

6 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
7 _____

8 To amend the District of Columbia Code to enact a statute to ensure that
9 government workers are held civilly liable for violating the civil rights of
10 Washingtonians by prohibiting qualified immunity.
11

12 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
13 this act may be cited as the “Ending Qualified Immunity Act of 2021.”

14 **Sec. 2: Definitions.**

15 In this section, the term:

16 (1) "Government" means all governmental entities of the District of
17 Columbia.

18 (2) "Government employee" means an individual employed or contracted by
19 the government of the District of Columbia.

20 **Sec. 3: Responsibility of the government employer.**

21 (1) The government is legally responsible for a wrongful act of its government
22 employee if such act occurs when that government employee is acting under color of law.

23 (2) This chapter abrogates governmental immunity, qualified immunity,
24 sovereign immunity and official immunity without regard to whether the government
25 employee acted pursuant to a policy or custom of the government.

26 (3) Nothing in this section shall be construed to abrogate judicial or
27 legislative immunity at any level of government of the District of Columbia.

28 **Sec. 4: Cause of Action**

29 (1) An individual may seek legal, equitable, or other relief in an appropriate
30 court for an injury caused by an act or omission of a government employee under color of

law in violation of a right under the laws or constitution of the District of Columbia or the United States.

(2) The proper defendant in an action under this section is the District of Columbia and not an individual government employee.

(3) A government employee shall not be found financially liable under this chapter for a violation of a right under the laws or constitution of the District of Columbia or the United States.

(4) The government employer shall notify promptly the government employee who is the subject of an action under this chapter. The government employee may intervene in the action to defend his employment, as a third-party defendant, pursuant to the District of Columbia's rules of civil procedures and court rules.

(5) The plaintiff bears the burden of proving a violation of a right under the laws or constitution of the District of Columbia or the United States by a preponderance of the evidence.

Sec. 5: Judicial process.

A court shall not deny a claim based on the invocation of a government employee's immunity including that:

(1) The rights, privileges, or immunities secured by the laws or constitution of the District of Columbia or the United States were not clearly established at the time of their deprivation by the government employee, or that the state of the law was otherwise such that the government employee could not reasonably or otherwise have been expected to know whether the government employee's conduct was lawful; or

(2) The government employee acted in good faith or that the government employee believed, reasonably or otherwise, that the government employee's conduct was lawful at the time it was committed.

56 **Sec. 6: Attorney fees.**

57 (1) In any proceeding in which a plaintiff's claim prevails, the government
58 shall be liable for reasonable attorney fees and other litigation costs.

59 (2) Reasonable attorney fees include those incurred on an hourly or
60 contingency basis, or by an attorney providing legal services on a pro bono basis.

61 (3) The court shall recognize that a plaintiff's claim prevails if the plaintiff
62 obtains any relief the plaintiff seeks in its complaint, whether the relief is obtained via
63 judgment, settlement or the government's voluntary change in behavior.

64 **Sec. 7: Termination of contract, agreement or employment.**

65 (1) Notwithstanding any other law, the District of Columbia shall not enter
66 into any contract or agreement that restricts its ability to terminate such contract, or to
67 terminate the employment of or take any other adverse action with respect to a government
68 employee, if a court finds, in an action brought under this chapter, that the employee
69 violated a plaintiff's right under the laws or constitution of the United States or the laws of
70 the District of Columbia.

71 (2) The government's termination of a contract, agreement or employment
72 with a government employee shall not affect the government's liability under this chapter.

73 **Sec. 8: Statute of limitations.**

74 (1) A claim made under this chapter shall be commenced no later than three
75 years from the date a claim can be brought for the deprivation of a right under the laws or
76 constitution of the District of Columbia or the United States.

77 **Sec. 9: Public information.**

78 (1) All documents, including complaints, judgments, settlements, and consent
79 decrees, are subject to public disclosure via the District of Columbia Freedom of
80 Information Act, D.C. Code 5-231, et seq., except that any social security numbers, dates of

birth, information about a person’s bank account, home addresses, or names of minor children shall be redacted from any such disclosure.

Sec. 10: Section 12-309 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended by striking the phrase “Except as provided in subsection (b) of this section” and inserting the phrase “Except as provided in subsection (c) of this section” in its place.

(b) A new subsection (b) is added to read as follows:

“(b) The notice requirement provided for by this section shall be tolled for claimants who are incarcerated or facing criminal charges relating to an arrest, provided that the incarceration or criminal charges involve material facts relevant to the action.”

(c) Existing subsection (b) is redesignated as subsection (c).

Sec. 11: Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 12: Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the district of Columbia Register.

**Submission of Chanel Cornett
Legal and Policy Officer, Fair Trials Americas***
***Titles and organizational affiliation for identification purposes only.**

**Committee On The Judiciary And Public Safety Joint Public Hearing On The
Recommendations Of The D.C. Police Reform Commission, B24-0094, The “Bias In
Threat Assessments Evaluation Amendment Act Of 2021,” B24-0107, The
“Metropolitan Police Department Requirement Of Superior Officer Present At
Unoccupied Vehicle Search – No Jumpout Searches Act Of 2021,” B24-0112, The
“White Supremacy In Policing Prevention Act Of 2021,” and B24-0213, The “Law
Enforcement Vehicular Pursuit Reform Act Of 2021”**

Tuesday, June 1, 2021

This submission follows oral testimony provided to the Council on May 20.

About Fair Trials: Fair Trials is an international criminal justice reform organization with offices in London, Brussels, and Washington DC. Fair Trials works to improve rights protection in criminal legal systems around the world with reference to international standards and comparative best practice. For the past 20 years, Fair Trials has worked in Europe and globally to develop and implement improved procedural rights standards, including the right to counsel in police custody, improved notification of rights for people in custody (orally and in writing), improved access to disclosure of evidence prior to interrogation, and increased safeguards for children in conflict with the law. Through its cross-regional learning program, “the Transatlantic Bridge,” Fair Trials is seeking to support US jurisdictions looking to improve protections for people in custody by providing them with information and expertise from international jurisdictions where right to counsel in custody is well established.

Introduction: On April 1, 2021, the DC Police Reform Commission released a 259 page report detailing recommendations to improve or find alternatives to policing in Washington D.C. One of the recommendations in Section 6 of their report includes guaranteeing juveniles and adults right to counsel in police custody prior to questioning by police:

“2(c) Recommendation: The Council should work with the Public Defender Service for the District of Columbia and the MPD to institute legal counsel in police stations. Both youth and adults should be guaranteed legal counsel upon their arrest, prior to any questioning by the police. Public defenders or private counsel should be allowed access to police stations 24 hours a day to communicate with and otherwise represent their clients and to sit in on interviews between police and individuals suspected of a crime.”

Pursuant to this recommendation, Fair Trials has drafted model legislation that would afford adults and juveniles the right to counsel within 2 hours after arrival at a police precinct and guarantee attorneys 24 hour entry into the precincts to carry out consultation in a confidential setting and provide legal assistance during interrogations and officer led questioning. Our drafted legislation also includes two other measures to ensure comprehensive implementation and enforcement of the right to counsel, such as: prohibiting police officers from beginning interrogation or questioning until counsel has been consulted, if such person wishes to invoke their right to consult counsel; and ensuring incriminating statements elicited in violation of

such person's right to counsel may not be used against them in criminal proceedings. We believe the Commissions' recommendations, along with our proposed codification of their recommendations, will ensure that the current privilege to be guided by an attorney upon arrest (for those who can afford and demand private counsel) becomes a right for everyone, and will provide oversight and protection against harmful policing practices in the District, which is the ultimate purpose of the Commission that the Council established.

Fair Trials is in the early stages of a project, together with the Urban Institute and the University of Chicago, to conduct implementation studies of existing right to counsel in police custody laws, provide technical support for implementation and legislative drafting, create data collection programs to determine their quantitative impact, and coordinate a national coalition of right to counsel practitioners and stakeholders. Moreover, we are engaged in ongoing conversations with multiple service providers, including DC law school clinics, the Superior Court Trial Attorneys Association, and the Public Defender Service for the District of Columbia, regarding their offices' capacity to implement and to effectively provide counsel in police stations. Our work will enable the District to learn from the experiences of other jurisdictions and provide the District with tools to successfully implement community oversight, via the right to counsel, over police in our city.

The District also possesses the infrastructure and is especially poised to become a leader on this issue nationally. There exists a wealth of indigent defense practitioners via The Public Defender Service for the District of Columbia, which is nationally renowned as a model for indigent defense, numerous highly ranked law schools with indigent defense clinics, and a robust Criminal Justice Act, or panel attorney program. The District is recognized as one of the most policed cities in the nation and must rise to the occasion of also being recognized as a city that provides its citizens with the most protection against abuse.

The following submission includes: proposed statute language and ideal elements; comparative legislation from Illinois, Maryland, California, and Europe regarding right to counsel in police stations; and issues resulting from implementation, and comments on how the legislation could be improved.

I. Proposed DC Statute and Ideal Elements

Below is a proposed statute for a DC right to counsel in police stations program. The statute affords persons suspected of a criminal offense the right to consult with counsel prior to interrogation or interview. The onus is placed on police officers to provide this right, rather than on the arrested person, due to the imbalance of power and information between police and people in custody. The proposed statute also affords attorneys 24-hour entry to provide consultation services and represent their clients during interrogations or questioning. Finally, an enforcement mechanism is included should violations of this right occur.

Proposed Statute:

A. Upon arrest, and prior to any interrogation or questioning, an officer must provide persons suspected of a criminal offense the right to consult with an attorney within 2 hours after arrival at the police precinct in person, alone and in private, for as many times and for such period as desired.

B. Attorneys must be allowed 24-hour entry into District of Columbia operated police precincts in order to carry out consultation and assistance described in Section A, and must be provided with the means by which to consult with arrested people in a confidential setting.

C. When arrested people invoke the right defined in Section A, interrogation or questioning may not start until they have consulted with counsel.

D. Incriminating statements elicited in violation of Section A may not be used against persons suspected of a criminal offense in criminal proceedings relating to the purpose of such interrogation, interview, or questioning.

Ideal Elements:

Ideally, we would propose a statute with detailed guidance for police and defense counsel that seeks to prevent many of the challenges with implementation we have seen in other jurisdictions. Therefore, we lay out our ideal elements of the law and its implementation, but propose only short and broad legislative language that we hope will provide ample space to implement robustly and with full consultation from all stakeholders. An ideal statute would:

- Define how the police should inform defendants of their rights, using plain and accessible language the defendant understands, orally and in writing, if need be with the help of an interpreter.
- Define the content of the information provided by the police regarding the right to consult counsel.
- Define how counsels are contacted, by the police and/or by defendants and via what technology. .
- Outline the conditions of consultations, including the respect for confidentiality of communications between arrested people and lawyers.
- Anticipate any budgetary needs the program may require.
- Specify the time afforded to defendants to consult with their lawyers and the time period in which counsel must be contacted and attend the station.
- Specify that it applies to all criminal offenses, including misdemeanors.
- Specify that a suspect may always revoke their waiver before or during questioning and that questioning must immediately stop and may only resume after the person have consulted with counsel.
- Specify which attorneys would provide counsel in police stations, such as the Public Defender Service for the District of Columbia, law school clinics, CJA/Panel attorneys, or pro bono attorneys.

II. Comparative Statutes, Implementation Issues, and Comments

The District has the opportunity to join and take part in leading the growing movement toward greater involvement of counsel in police custody around the country. It would also be part of a larger international movement, joining every country in the European Union which, because of Fair Trials' advocacy, have increased safeguards for individuals and recognized the central role that legal counsel plays in protecting citizens from state violence in custody.

Across the country other jurisdictions are increasingly adopting legislation guaranteeing access to counsel in police custody. In the context of juveniles, California began

implementation of a similar bill in January, SB 203¹ and Maryland's Juvenile Interrogation Protection Act² is progressing through both chambers of the Maryland Legislature. Moreover, the state of Illinois passed right to counsel legislation for all arrested people, adults and children, 2017 and recently strengthened it through amendment in order to confront the persistent problem of Chicago police failing or refusing to provide arrested people with legally-mandated phone calls to counsel.³ Further advocacy for the right to counsel in police stations has begun in the states of Washington and New York and other states are becoming interested in granting these safeguards to their residents.

Below are right to counsel statutes in other domestic and international jurisdictions. Also included are comments regarding how the statutes could be improved and implementation issues that were highlighted in litigation. Fair Trials drew upon the drafting and experiences of these jurisdictions in drafting the proposed DC right to counsel in police stations statute.

1. Illinois

Section 725 ILCS 5/103-4 - Right to consult with attorney

Any person committed, imprisoned or restrained of his liberty for any cause whatever and whether or not such person is charged with an offense shall, except in cases of imminent danger of escape, be allowed to consult with any licensed attorney at law of this State whom such person may desire to see or consult, alone and in private at the place of custody, as many times and for such period each time as is reasonable. When any such person is about to be moved beyond the limits of this State under any pretense whatever the person to be moved shall be entitled to a reasonable delay for the purpose of obtaining counsel and of availing himself of the laws of this State for the security of personal liberty.

<https://ilga.gov/legislation/ilcs/documents/072500050K103-4.htm>

Comments:

- “Any person.... shall.. be allowed to consult...” usage of the word “shall” instead of “must” could be interpreted to mean that this privilege is optional and police have discretion to grant this privilege. Additionally, the usage of “shall be allowed” places the burden on the client to mention this right, rather than placing a duty on the officer to provide the client this right. Better language would include the word “must” and place the onus on the officer to provide the client the right to consult with an attorney. i.e. “any person... must be provided the right to consult with any licensed attorney...”
- “For such period each time as is reasonable..” is not good language because “reasonable” is vague and it enables officers to determine what is “reasonable.”
- The statute is vague about at what time consultation with an attorney is allowed. For example, is consultation allowed prior to interrogation, interview, or questioning (which would be the purpose of early access to counsel) or is this a general allowance of consultation with an attorney at any time?

¹https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203, explained at page 7

²<https://mgaleg.maryland.gov/2021RS/bills/hb/hb0315t.pdf>, explained at page 7

³<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1966&ChapterID=54&SeqStart=3100000&SeqEnd=4200000>, explained at page 6

Section 725 ILCS 5/103-3 - Right to communicate with attorney and family; transfers

(a) Persons who are arrested shall have the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or in any other reasonable manner. Such communication shall be permitted within a reasonable time after arrival at the first place of custody.

<https://ilga.gov/legislation/ilcs/documents/072500050K103-3.htm>

Comments:

- “shall have the right” places the onus on the client to exercise this right, rather than placing a duty on the police to provide the client this right. Better language would be “persons... arrested must be provided the right to communicate with an attorney...”
- “reasonable number of telephone calls” the usage of “reasonable” is vague and enables the officer to decide what is reasonable. The statute should identify how many calls are allowed.
- “shall be permitted within a reasonable time after arrival” the usage of “reasonable” is vague and enables officers to determine what a reasonable time after arrival is. The statute should identify exactly how long after arrival a call must be provided.
- “Persons who are arrested” statute is limited to those who are arrested, this means that those who are subject to interview, interrogation, or questioning and have not been arrested are not covered under this statute.

Implementation Issues with Both Illinois Statutes:

In litigation against the City of Chicago, claimants alleged that the Chicago Police Department instituted policies to deny arrestees their right to counsel, in violation of the aforementioned statutes (Section 725 ILCS 5/103-3 and Section 725 ILCS 5/103-4):

“These policies include: refusing to allow people in CPD custody access to a phone for extended periods of time or at all; refusing to inform attorneys where their clients are being held in custody when directly asked for location information; refusing to allow attorneys physical access to police stations where their clients are being held; conditioning telephone access on a client’s waiver of state law and their constitutional rights; and refusing to display the COOK COUNTY PUBLIC DEFENDER’s Police Station Representation Unit (PSRU) hotline number in CPD stations so that detainees do not know how to get in touch with an attorney.”

The DC statute can mitigate these issues by: placing the onus on the officer to provide access to counsel rather than on the defendant to request access to counsel; including a provision that grants attorneys entry to police stations 24 hours a day; including a provision that prevents the right to counsel from being conditioned on a waiver of other rights; and including a provision that requires the precinct to display the contact information of a Public Defender Service hotline.

Updated Section 725 ILCS 5/103-3 (Effective July 1, 2021)

(a-5) Persons who are in police custody have the right to communicate free of charge with an attorney of their choice and members of their family as soon as possible upon being taken into police custody, but no later than three hours after arrival at the first place of custody. Persons in police custody must be given:

- (1) access to use a telephone via a land line or cellular phone to make three phone calls; and
- (2) the ability to retrieve phone numbers contained in his or her contact list on his or her cellular phone prior to the phone being placed into inventory.

(a-10) In accordance with Section 103-7, at every facility where a person is in police custody a sign containing, at minimum, the following information in bold block type must be posted in a conspicuous place:

- (1) a short statement notifying persons who are in police custody of their right to have access to a phone within three hours after being taken into police custody; and
- (2) persons who are in police custody have the right to make three phone calls within three hours after being taken into custody, at no charge.

(a-15) In addition to the information listed in subsection (a-10), if the place of custody is located in a jurisdiction where the court has appointed the public defender or other attorney to represent persons who are in police custody, the telephone number to the public defender or appointed attorney's office must also be displayed. The telephone call to the public defender or other attorney must not be monitored, eavesdropped upon, or recorded.

(c) In the event a person who is in police custody is transferred to a new place of custody, his or her right to make telephone calls under this Section within three hours after arrival is renewed.

(d) In this Section "custody" means the restriction of a person's freedom of movement by a law enforcement officer's exercise of his or her lawful authority.

(e) The three hours requirement shall not apply while the person in police custody is asleep, unconscious, or otherwise incapacitated.

(f) Nothing in this Section shall interfere with a person's rights or override procedures required in the Bill of Rights of the Illinois and US Constitutions, including but not limited to Fourth Amendment search and seizure rights, Fifth Amendment due process rights and rights to be free from self-incrimination and Sixth Amendment right to counsel.

<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1966&ChapterID=54&SeqStart=3100000&SeqEnd=4200000>

2. Maryland

HB 315/SB 136

(B) A law enforcement officer may not conduct a custodial interrogation of a child until:

- (1) The child has consulted with an attorney who is:
 - (I) retained by the parent, guardian, or custodian of the child; or
 - (II) provided by the office of the public defender; and
- (2) The law enforcement officer has notified, or caused to be notified, made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian of the child in a manner reasonably calculated to provide actual notice that the child will be interrogated.

(C) A consultation with an attorney under this section:

- (1) Shall be confidential:
 - (I) conducted in a manner consistent with the Maryland rules of professional conduct; and
 - (II) confidential; and
 - (2) May be:
 - (I) in person; or
 - (II) by telephone or video conference.
- (E) The requirement of consultation with an attorney under this section:
- (1) may not be waived; and
 - (2) applies regardless of whether the child is proceeded against as a child under this subtitle or is charged as an adult.

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb0315t.pdf>

Comments:

- The statute is limited to custodial interrogations, but there are scenarios where an officer could have contact with a juvenile and even elicit an incriminating statement that are not formally custodial interrogations. To make this statute better, ideally the language would state: “a law enforcement officer may not conduct any interview, questioning, or interrogation of a child until...”
- The term “child” should be defined, as some statutes relating to “children” only apply to juveniles under the age of 16.
- There is concern that the consultation will only occur via telephone since it requires less resources as opposed to in person, which is preferred. The statute could be improved by limiting the consultation to in person.

3. California

SB 203 California

625.6. (a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203

Comments:

- The statute is limited to custodial interrogations, but there are scenarios in which an officer could have contact with a juvenile and even elicit an incriminating statement that are not technically custodial interrogations. To improve this statute, ideally the language would state: “prior to any interview, questioning, or interrogation...”
- Use of the term “shall” is less definitive than our suggested phrasing, “must.”
- There is concern that, if consultations are explicitly permitted to be conducted by telephone, that in-person consultations will infrequently occur in favor of phone consultations. Research from the UK and Europe has demonstrated that telephone legal advice for arrested people in custody is not sufficient to protect their rights

and should be used only in emergency situations or at the request of the arrested person.⁴

4. Europe

England and Wales Statute (Police and Criminal Evidence Act “PACE”)

6 Right to legal advice

6.1 ... all detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available.

6.3 A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station.

6.4 No police officer should, at any time, do or say anything with the intention of dissuading any person who is entitled to legal advice in accordance with this Code, whether or not they have been arrested and are detained, from obtaining legal advice.

6.5 ... Whenever legal advice is requested, ... the custody officer must act without delay to secure the provision of such advice. If the detainee has the right to speak to a solicitor in person but declines to exercise the right the officer should point out that the right includes the right to speak with a solicitor on the telephone. If the detainee continues to waive this right, or a detainee whose right to free legal advice is limited to telephone advice from the Criminal Defense Service (CDS) Direct (see Note 6B) declines to exercise that right, the officer should ask them why and any reasons should be recorded on the custody record or the interview record as appropriate...

6.6 A detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice unless:

(b) an officer of superintendent rank or above has reasonable grounds for believing that:

(i) the consequent delay might:

- lead to interference with, or harm to, evidence connected with an offense;
- lead to interference with, or physical harm to, other people;
- lead to serious loss of, or damage to, property;
- lead to alerting other people suspected of having committed an offense but not yet arrested for it;
- hinder the recovery of property obtained in consequence of the commission of an offense.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710129/2018_CodeC-Revised_Final-APS_18-05-23_WebCovers.pdf

European Union Directives

The right of access to a lawyer in criminal proceedings

⁴https://www.fairtrials.org/sites/default/files/publication_pdf/Station%20house%20counsel_%20Shifting%20the%20balance%20of%20power%20between%20citizen%20and%20state.pdf

1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defense practically and effectively.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following:

- (a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;
- (c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.

4. Member States shall endeavor to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings. Article 4 Confidentiality Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0048&from=EN>

III. Conclusion

The intended impact of lawyers in police custody is to influence systematic change to a number of criminal justice outcomes, beyond the simple protection of the right to silence, and accrue broad benefits to the justice system by:

- Challenging unlawful and abusive arrests, including those that do not lead to criminal charges, discouraging police from unnecessary street contact.
- Reducing prosecutions and jail admissions by encouraging police and prosecutors to drop and divert more cases.
- Identifying the vulnerabilities of arrested people and promoting diversion and treatment opportunities.
- Identifying incidence and patterns of police misconduct and ill treatment of arrested people.
- Improving communication channels and trust between police, the community (including victims and witnesses), defenders and prosecutors.
- Capacitating defense lawyers to prepare more comprehensively for arraignment, pre-trial detention and plea negotiations – reducing wait times and administrative hurdles.
- And Improving access to medical care and other essential needs of detained people

The right to counsel in police stations has the potential to disrupt the machinery of criminalization, mass incarceration, and police control. The police in the District must no longer be permitted to operate in the shadows, and implementing the right to counsel for all adults and children in police custody is a key element of their reform.

Fair Trials Americas stands ready to work with the Council and all relevant service providers and stakeholders to assist in the development and implementation in law and practice of this important recommendation of the Police Reform Commission.

Testimony by Ariel Levinson-Waldman of Tzedek DC to the Judiciary & Public Safety & Committee of the Whole Regarding the Recommendations of the D.C. Police Reform Commission

May 20, 2021

Chairpersons Mendelson and Allen, Councilmembers, and staff: Thank you for holding this hearing today on the critically important issues addressed by the D.C. Police Reform Commission.

I'm Ariel Levinson-Waldman, Founding Director of Tzedek DC. Proudly headquartered at the UDC David A. Clarke School of Law, Tzedek DC's mission is to safeguard the legal rights and financial health of DC residents with lower incomes facing debt-related-problems. 90+ percent of Tzedek DC's clients are African-American DC residents, 60 percent are women, and 25+ percent are disabled.

I'm here to address one of the many issues highlighted in the Commission Report: the impact of parking and minor traffic infraction tickets on DC residents who are in or on the brink of poverty. The Commission report notes one "key question" concerning "the financial impact of fines for minor violations on District residents—particularly poorer residents who often cannot afford to pay and who, under current District law, are prohibited from renewing their driver's licenses (essential for so many daily activities, including transportation to work) for traffic debts of over \$100." The law referenced by the Commission's report is DC's so-called Clean Hands Law, which punishes DC residents for unpaid fines or fees of over \$100 by withholding driver's licenses from them, with no inquiry as to their ability to pay.

On April 26, a few weeks after the Commission issued its report, Tzedek DC and a pro bono team from the Venable law firm issued a different, related report. Our report, joined by a coalition of 30+ other civil rights, faith-based, consumer protection and justice advocacy organizations, addresses the specific question the Commission's report raises about the Clean Hands Law.

Titled Driving DC to Opportunity, the report shows how DC is the only jurisdiction in the region that punishes residents with unpaid fines and fees by disqualifying them from renewing their driver's license, and, with states having passed recent reforms, is now joined by only two states in the country that cling to this practice. The report highlights the life stories and struggles of District

residents unable to drive lawfully as a result of the Clean Hands Law. It details how DC's application of that law to driver's licenses converges with structural racism to disproportionately harm Black DC residents, in in at least three ways.

First, Black drivers receive a disproportionate share of the traffic tickets issued in DC—65% of the tickets issued to adults during traffic stops —while making up only 43% of DC's adult population.

Second, despite being more likely to face fines and fees, Black DC residents are, on average, much less likely than white DC residents to have the financial resources to pay them. As the Urban Institute has documented, the statistically median Black household in DC has net assets of \$3,500, less than two percent of the \$284,000 median number for white DC households.

Third, MPD data shows that Black DC residents are **19 times** more likely than white residents to be arrested for driving without a valid license—exposing Black DC residents to incarceration risks at a disturbingly disproportionate rate. Under DC law, driving without a valid license is a criminal misdemeanor punishable by up to a year in jail and fine of up to \$2,500. Since the Clean Hands Law deprives DC residents of their licenses based on debt to the government alone, without permitting any inquiry into one's ability to pay, the law disproportionately exposes DC residents who need to drive—to get to work, to buy groceries, to access childcare, to go to the doctor—to the risk of criminal prosecution and jail. Worse still, driving without a license is the most common reason why DC residents recently released from jail and prison are re-incarcerated.

In a section about "Decriminalizing Poverty," the Commission's Report calls for a "far less punitive approach to low level offenses that are driven primarily by structural racism, intergenerational poverty, and a deficit of resources." The Clean Hands law punishes poverty in precisely the way the Commission Report tells us needs to be changed.

But there is good news. While reviewing the constellation of complex and important issues and recommendations raised in the Commission Report, the Council is already moving to make a simple, positive change in the Clean Hands Law.

In the last several weeks, two important bills have been introduced in this Council that address the problem of the Clean Hands Law's application to driver's licenses. The first bill, The DC Driving to Opportunity Amendment Act of 2021, was co-

introduced by a majority of the Council and would remove the issuance and renewal of driver's licenses from the current list of punishments in the Clean Hands Law. The second bill, The Clean Hands Certification Equity Amendment Act of 2021, was introduced by Councilmember McDuffie. It also would, among other things, remove the issuance and renewal of driver's licenses (as well as identification cards) from the scope of the Clean Hands Law. If enacted and funded, either bill will represent a major step forward.

Both bills have been referred to the Economic Development Committee. We look forward to working with Councilmember McDuffie as Chair of that Committee, and with all of you on these issues.

Thank you.



DC Health Matters Collaborative

Bread for the City | Children's National | Community of Hope
Howard University Hospital | HSC Health Care System
Mary's Center | Sibley Memorial Hospital | Unity Health Care
DC Behavioral Health Association
DC Hospital Association | DC Primary Care Association

**Testimony of the DC Health Matters Collaborative
to the Committee on the Judiciary and Public Safety
and the Committee of the Whole on
[the Recommendations of the D.C. Police Reform Commission](#)**

Thursday, May 20, 2021

My name is Amber Rieke. I am the Director of External Affairs for the DC Health Matters Collaborative. Thank you for the opportunity to testify today, with special thanks to the members of the Police Reform Commission for their important work. I want to speak specifically today to their first recommendation related to behavioral health crisis response, and the evolution of the system at hand.

About DC Health Matters Collaborative

Launched in 2012, the DC Health Matters Collaborative is a partnership of hospitals and federally qualified health centers (FQHCs) that combine efforts to assess and address community needs in the District of Columbia. We work together to achieve our stated vision: one healthy and thriving capital city that holds the same promise for all residents regardless of where they live.

Collaborative membership includes four non-profit DC hospitals (Children's National Hospital, The HSC Health Care System, Howard University Hospital, and Sibley Memorial Hospital); four community health centers (Bread for the City, Community of Hope, Mary's Center, and Unity Health Care); and three associations (DC Behavioral Health Association, DC Hospital Association and DC Primary Care Association).

Based on our 2016 and 2019 needs assessment findings, the Collaborative is organized around four key priorities: Mental Health, Care Coordination, Health Literacy, and Place-Based Care.

One of the Collaborative's central projects is working together to improve access to and equity within behavioral health care in D.C. Over the past year we have been looking at the crisis response system in the District. We conducted interviews with our behavioral health professionals - psychiatrists, social workers, nurses, peer support workers – and asked whether what we get now as a first response, is working. And what we found is that the status quo is not keeping everyone safe, was in many cases creating *more* trauma and chaos. We released a white

paper summarizing our findings and recommendations this month: [“Re-Routing Behavioral Health Crisis Calls from Law Enforcement to the Health System.”](#)

Mental Health Crises in the Community

About 20% Americans have a mental health condition, generally less than half of people are receiving treatment. Only 42% of District residents with these conditions are receiving treatment, and we know mental health indicators have worsened amidst the pandemic. In some cases, mental health concerns become an emergency or a crisis. That may look like erratic behavior, threats of suicide, public intoxication, hallucinations. Currently, calls to 911 for urgent help will dispatch MPD.

This is extremely dangerous – not to mention costly and disruptive. Some research suggests that people with severe mental illness are 16 times more likely to be killed during an encounter with police. As we know, this compounds with real disparities in policing and arrest by race. In Washington, D.C. Black people are more policed; they are arrested by MPD at a per-capita rate seven times higher – and killed at a rate 13 times higher – than white people. This makes crisis calls inherently more dangerous for Black individuals and contributing to fear in calling for police help.

Fundamentally, with the exception of instances of violence, these calls could be better handled by an unarmed social workers or other behavioral health professionals, to de-escalate in the moment and then work to connect the people to services and resources for the long run.

The National Alliance on Mental Illness (NAMI) notes an effective crisis response system is available 24 hours a day, with walk-in and mobile crisis services. Similarly, the Justice Collaborative Institute notes that a model crisis response system is separate from law enforcement and includes on-site, on-demand and preventative services. U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) observes that crisis services must be available to anyone, anywhere, and anytime (and best practices for a child and adolescent crisis system should be available 24 hours a day to all children, regardless of payer). Overall, a comprehensive crisis response system should include screening and assessment, mobile crisis response and stabilization, residential crisis services, psychiatric consultation, referrals and warm hand-offs to home- and community-based services, and ongoing care coordination.

Instead, what we have now, as one D.C. social worker described, is “hit or miss.” The decision to call 911 is based on how quickly they need someone related to risk of violence to self or others, but, they added: “We feel conflicted, especially when someone may be dangerous, [if the person in crisis] is a Black man who is more likely to be injured by police. We know they need help, but we know that our decision to call MPD could lead to him being harmed.”

Several providers described experiences of calling 911 for urgent intervention – when someone is trying to walk into traffic, for example – with FEMS and MPD vehicles responding to the same scene in short succession. Multiple police, fire truck and/or ambulances all come at the same time with sirens activated, which may escalate matters when the opposite approach is needed. “That’s a lot of lights and uniforms and can be overwhelming.” One provider noted that “sirens and badges – in the context of systemic oppression – are symbolic in themselves and can be traumatizing.”

First-hand accounts also revealed chaotic or unhelpful communication between entities. Lines of authority or responsibility may exist – for example, which team should transport or call the hospital – but such guidance often appears to be unknown or ignored. The person in crisis is often handcuffed, which seems unnecessary and harmful to many clinicians.

One experienced clinician summarized: “In general, police are called to respond to many kinds of situations that they don’t have training, knowledge or background to handle – they don’t infuse health into situations that are already escalated and in crisis.” She described MPD as “not super empathetic or sympathetic.” She recalled times she would have to call 911 to get transport to a hospital for a patient with her at the clinic, only to have MPD or FEMS “try to barge into the exam room.” Clinicians feel like it is out of their hands, even in their own facility. “It’s a circus. Meanwhile you’re trying to create a safe environment for the patient.”

Dispatching Behavioral Health Professionals Rather than Police Through 911

As the Police Reform Commission Report states in the first recommendation: “Crises should be met with specialized intervention and skillful de-escalation rather than forced compliance and arrest.”

Models limiting harm and trauma already exist across the U.S. to answer calls through the 911 with trained medics, social workers, or experienced crisis workers. We summarized examples in our white paper from Oregon, Colorado, Florida, California, New Mexico, and Washington State, who are beginning to reimagine their policing and crisis response systems.

We are glad to learn of the pilot through Office of Unified Communications and Department of Behavioral Health (DBH) to dispatch professionals instead of police. Within the District's crisis response system, there are several important public programs: the ACCESS Helpline and Community Response Teams (CRT), and Child and Adolescent Mobile Psychiatric Service (ChAMPS) for crisis response to youth. It is a great improvement if calls to 911 can call on these essential resources, and deploy skilled professionals with health care tools. However, it is not

clear from the pilot whether dispatchers would connect to CRT directly, or create an intermediary step through the ACCESS Helpline.

I also would like to hear whether the kinds of events imagined for alternatives to police will include substance use issues - for example, someone actively using drugs in public, someone displaying disorientation or intoxicated behaviors, etc. We know substance abuse often co-occurs with a mental health issue.

We agree with the Commission co-chairs from their testimony that this pilot should not foreclose the implementation of their recommendations for legislative action. There are several reasons for this, from capacity to evaluation.

Build Workforce and Infrastructure Capacity to Meet Demand

Simply changing the first responder is not the end of the story. There is a lot of infrastructure and practice that will need to improve: we need more mental health professionals in our workforce to meet the demand, we need more kinds of settings to escort people to – for respite, or detox, or a bridge between crisis and ongoing treatment.

We are concerned that a pilot without this capacity dooms it to fail, which would leave us back where we started. This pilot might be a good opportunity to include additional agencies, such as DC Health and the Health Licensing Boards, and even Department of Employment Services. After the year that the health system has had, it would be a good opportunity for some general health care workforce strategic assessment and planning.

As Anthony Hall, director of the Department of Behavioral Health's Community Response Team (CRT), told the Commission - his team is usually successful in responding on the scene without MPD support with individual counseling and de-escalation techniques. Most of our interviews with mental health professionals truly appreciated CRT's model and skills.

However, while they may need the skills CRT can bring to an incident, if they need response sooner than 30-45 minutes, they call 911 for the police. CRT themselves told the Commission that at its current operational capacity, the CRT cannot provide a timely emergency response.

We also need more robust training for first responders and 911 dispatchers related to behavioral health, de-escalation, and mental health first aid. Will a dispatcher be equipped to stay on the phone with me and help stabilize a situation until help arrives, in the same way as a medical emergency?

From the Commission report: “Because patrol officers are likely to encounter individuals in crisis and may need to engage the person until a specialized responder arrives, every MPD officer must complete 40 hours of crisis intervention training (CIT). To supplement this, the Council should provide special funding to DBH to lead additional crisis intervention training that is open to the public and required for all MPD members.”

Reform of the FD-12 Authority and Implementation

Further, about 20% of CRT’s calls require involuntary treatment or execution of an FD-12 for transport to hospital for evaluation and involuntary commitment. If we use this number only to extrapolate the volume a pilot might show, there should be urgent attention to another issue the Commission report raises: the legal authority and implementation of FD-12s.

As the report states: “The Council should amend DC Code Sec. 21-521 which governs involuntary commitment (FD-12), making it truly a last resort undertaken only by behavioral healthcare professionals and in ways that avoid further traumatizing people... Initiation of the FD-12 process to hospitalize an individual against their will is a treatment option that should only be pursued under limited circumstances and when there is not a viable, safe, less restrictive alternative. When circumstances require involuntary commitment of a person, steps must be taken to protect that person from further physical or psychological trauma. Tasking agents of the criminal justice system—MPD officers—with enforcing involuntary commitment unnecessarily exacerbates the trauma of this experience for individuals in crisis, and misuses MPD time and resources. This is especially true when the officers facilitating involuntary hospitalization do not have crisis intervention training or real-time guidance from behavioral healthcare professionals.”

Currently, an FD-12 is executed by an officer, or an “officer agent,” a physician, psychologist, or certain mental health provider type who is trained and certified by DBH. This process was frequently cited in our conversations with providers, including major gaps in regulations that lead to poor outcomes. They perceived that the execution of the FD-12 can cause trauma or damage to the patient-provider relationship, especially if it does not ultimately result in meaningful care.

The restrictive criteria for what kind of professional can write or carry out an FD-12 feels arbitrary or problematic to providers we interviewed. Providers frustrated with current “officer agent” parameters wondered “why can’t anyone with a license to give medical care or write prescription be eligible to execute an FD-12?” For example, a psychiatric nurse practicing at a federally qualified health center – arguably the exact kind of provider you’d want to walk someone through this life event – has to call MPD or CRT to execute an order for her own patient sitting in her own exam room.

Beyond the definitional barriers, DBH trainings to become an officer agent are infrequent and very limited in size. I want to emphasize that the training is essential, as it involves essential issues of civil liberties. The training should be more inclusive and accessible. We might have the right professionals responding to 911 calls, but they need to be able to perform the full spectrum of care if the goal is to keep MPD out of these interactions.

Finally, a major limitation in the current system is that one may not be able to be held or evaluated at the hospital after an FD-12 if they are actively intoxicated on substances. Behavioral health providers point out that when someone has a mental health condition and they are also on substances, it creates a grey area wherein mental dysregulation may be difficult to evaluate. One provider reflected on instances when she has wanted to write an FD-12 for someone, but the fact that they were also intoxicated was a deterrent. They may opt to call CRT instead, with the aforementioned wait times. There is a reported need for alternatives to FD-12s in these instances, such as medically managed withdrawal programs, detox or sobering centers, or protective custody, in D.C.

Assessment and Evaluation of System Changes

Further, we vigorously affirm their recommendation for an assessment of the views of the community and professionals in the first of several methodical steps to scaling up current programs. “The Council must ensure that the voices of DC’s most impacted residents are invited, elevated, and honored in this assessment.” We also agree that there should be feedback from or consultation with the individuals and community served, and all professionals involved in the process, to determine the future course of the system.

Whether through the pilot or future legislation, we see the need for a public hearing, or a community advisory group to be consulted from start to finish. The Commission calls on the Council “to establish a task force or coalition of community-based providers and public officials to assess the adequacy of preventative community behavioral health and wellness programs on an annual basis.”

The report suggests an evaluation of very important data to assess success, including average response time; resolution of crisis teams’ interventions; any refusals from either program to respond and the reasons; incidence of injury to the person in need or crisis team members; and incidents that required MPD support, and source of referral (911, MPD, person in crisis, family member, or observer).

We might add to the pieces for oversight and evaluation:

- “Average wait times” *plus* details related to contributing factors, for example whether the wait times were because of staffing, traffic or parking issues, geographic distance, etc;

- Ward and/or Zip code of call location, which would be informative for staging and staffing decisions for future work.

Meeting Mental Health Needs with Care and Treatment, Before and After Crisis

What is really essential – for this issue and for preventing people from being in crisis to begin with – is expanding the infrastructure to appropriately care for people in crisis in D.C., including more beds in health care settings and more people in the workforce. To this end, we agree with the Commission’s second recommendation: With funding from the Council, and support of the Mayor, the Department of Behavioral Health (DBH) must increase investments in evidence-based, culturally competent behavioral health and wellness services to meet the current and anticipated needs of all District residents.

On the topic of treatment options, we also affirm the Commission’s suggestion that “The District must simultaneously expand voluntary inpatient treatment options... The District must build a campaign around future efforts to expand community mental health services in order for these efforts to prevail.”

Finally, the proposed changes “require a robust campaign to educate the DC public on recognizing the signs of a behavioral health crisis; recognizing behaviors related to a developmental disability; and the appropriate agencies and numbers to secure help for people with developmental disabilities and people experiencing behavioral health crises... The more we can empower DC residents to correctly use 911, the sooner appropriate crisis responses can be dispatched to the scene.”

Conclusion

Working together, health providers, community members, and the District can re-imagine crisis response with the goal of a safer, more health-centered, and better coordinated care for people with mental illness, addiction, trauma, distress, or crisis. We appreciate and support the discussion and recommendations of the Police Reform Commission for these reforms.

In our [white paper](#), we detail more of our own research and recommendations. We will continue to look at what is working, what is missing, and what, in an ideal world, our crisis response system should look like. We are eager for the opportunity to create this dialogue with policymakers and partners in the health system.

I’m available to answer any questions you may have. I can be reached at arieke@dchealthmatters.org. Thank you.



**Testimony of Christopher C. Hull, Ph.D.
Before the Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
Committee of the Whole Joint Public Hearing on
The Recommendations of the D.C. Police Reform Commission
Thursday, May 20, 2021, 9:30 a.m. – 6:00 p.m.**

Chairman Allen, Chairman Mendelson, Members of the Council, Ladies and Gentlemen, thank you so much for the opportunity to make suggestions based on the Recommendations of the D.C. Police Reform Commission, as well as the legislation you are considering here today. I am grateful for the opportunity.

My name is Chris Hull, and I'm a Senior Fellow with Americans for Intelligence Reform, a non-profit organization that focuses on the proper assessment of threats facing our nation, and your family and mine. I am also a longtime District resident.

Please allow me to make recommendations with respect to three of the bills the Council is considering today.

1. [Bias in Threat Assessments Evaluation Amendment Act of 2021](#)

As you know, this bill requires the Attorney General of the District of Columbia to conduct a study to determine whether the Metropolitan Police Department engaged in biased policing when conducting threat assessments of assemblies within the District of Columbia.

My concern is that in the bill, protected classes include race, color, religion, sex, national origin, or gender, but did not include political affiliation.

The DC Human Rights Act (DCHRA) [provides](#) that a person may not be discriminated against based on the individual's actual or perceived "political affiliation."

The question is whether the Metropolitan Police Department (MPD) evaluated assemblies over the covered period based in part based on the politics of those who took part in them.

In order to properly investigate the MPD response, Americans for Intelligence Reform recommends that the Council add “political affiliation” to the protected classes listed on lines 66-67.

2. [Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021](#)

The bill appears to address a problem that no longer exists. As early as 2013, then-MPD Chief Cathy Lanier [called](#) such claims “fantasy.” As early as 2015, MPD [said](#) it hasn't used this policing tactic for at least 15 years, and even then, it was employed only for high-risk arrests. She [charged](#) that activists were likely referring to vice units, responsible for covert drug busts. [According to](#) Chief Lanier, "An 11-year-old telling a story, and then the ACLU retelling that story, is not a fact.”

But even if MPD does engage in jump-out policing, this bill appears to have no effect whatsoever on restricting such a practice. Instead, the bill prohibits MPD from conducting searches of unoccupied vehicles unless an array or requirements are met.

What is the real concern here? It appears that the true goal of the legislation is to stop MPD from ever searching empty vehicles. And why? Because MPD might find contraband of one kind or another there.

Why would we not want MPD to find contraband? In the case of drugs, it may be that some do not believe that drug possession should be illegal in the first place. Given that the number in Washington who died of drug overdoses rose from 213 in 2018, to 281 to 2019, to 349 in 2020 – a nearly 40% increase over that time period – that seems like a terrible policy position. Regardless, it has literally nothing to do with jump-out policing.

In the case of firearms, it may be that some do not want individuals charged over concerns about mass incarceration. The problem with this in turn is that 2019 saw the [highest homicide rate](#) in the District in more than a decade, 2020 was worse, and homicides are [up 35% in 2021](#) compared to this time last year.

Finally, lines 18-20 and 45-46 of the bill explicitly state that the owner of the vehicle shall have the right to sue the individual officers not adhering to this law in their individual capacity.

This is going to worsen the problem of police quitting. Last year, the D.C. Police Union President revealed that [70% of police officers in Washington were considering quitting](#).

Since the [DC Council bill last year intended to reform District policing](#) went into effect, at least [313](#) officers have retired or resigned.

Police Chief Robert Contee said that’s a concern:

I would strongly say that it’s something that we need to continue to not just watch, but it’s something that eventually we must act on in terms of making sure that our force is at the strength

where it needs to be. Every year, we lose officers to resignation, retirement, termination, even, we lose officers to that, certainly, we want to make sure that our officers who are out here doing the job that they are properly supported with the resources that they need.

This bill moves in the opposite direction, while at the same time directly harming public safety.

3. [Law Enforcement Vehicular Pursuit Reform Act of 2021](#)

The bill is intended prohibit District of Columbia law enforcement officers from engaging in vehicular pursuits, unless the officer reasonably believes that the fleeing suspect has committed or has attempted to commit a crime of violence and that the pursuit is necessary to prevent an imminent death or serious bodily injury and is not likely to put others in danger.

That description, however, leaves out the fact that the bill bans under any circumstances a whole array of vehicle pursuit tactics intended to bring pursuits to an end and save lives.

Let's be clear: Under this bill, if officers reasonably believe that the fleeing suspect has committed or has attempted to commit a crime of violence, and that the pursuit is necessary to prevent an imminent death or serious bodily injury, they *still* cannot engage in any of these vehicle pursuit tactics.

In those circumstances, this bill *increases* the risk to the public, in order to *decrease* the risk to someone an officer reasonably believes is a violent criminal or is about to cause death or serious injury.

Moreover, the list of requirements for police to engage in vehicle pursuit is so onerous as to effectively ban such pursuit even without use of aggressive vehicle pursuit tactics.

For instance, Line 98 of the bill asks “Whether the law enforcement officer engaged in de-escalation measures.” How can an officer reasonably engage in de-escalation measures when a suspected murderer passes him in a vehicle at high speed? Do we really want to prohibit a pursuit in such a case?

Similarly, Lines 99-100 of the bill encourage fact-gathers investigating vehicle pursuit to evaluate “any conduct by the law enforcement officer increased the risk of harm.” *Any* conduct that increases the risk of harm includes beginning the pursuit in the first place.

Now, I know that this bill is intended to respond to the tragic [deaths of individuals like Anthony Louis](#) and [Karon Hylton](#). As a result, there's no question in my mind but that its authors have the best of intentions.

We all know, however, what the road to Hell is paved with.

The truth is that there is a danger from vehicle pursuits – but there is also a danger to the public – to your children – of *not* engaging in vehicle pursuits when they are appropriate.

In conclusion, Chairman Allen, Chairman Mendelson, Members of the Council, Ladies and Gentlemen, I very much appreciate your giving me and the rest of the public the opportunity to review these policies and provide our thoughts. I would be delighted to work with you in any way that would be of service to you. Thank you.



May 5, 2021

Mayor Muriel Bowser
Council Member Charles Allen
Chairman Phil Mendelson

RE: Police Reform Commission's Report

Dear Mayor Bowser and Council Members:

At the duly-noticed regular meeting of Advisory Neighborhood Commission 3D on May 5th, the Commission authorized the submission of these comments on the Police Reform Commission's April 1st Report.

We represent residents living in the Foxhall Village, Palisades, Spring Valley, Wesley Heights, and American University neighborhoods of Northwest Washington, D.C. Our experiences with the Metropolitan Police Department are obviously different from the experiences of many of our fellow residents across the District and therefore we have opted to comment only on two Police Reform Commission recommendations that clearly impact our jurisdiction directly and substantially —namely, the response to mental health crises and enforcement of traffic infractions. We believe that the Council and Executive should listen to the voices of community organizations and individuals most affected by practices of the Metropolitan Police Department addressed by the other recommendations in the Commission's Report.

With regard to responding to mental health crises, we agree with the Commission that it would be good to divert the responsibility for responding to mental health crises to non-MPD staff specially trained to intervene in such cases. However, there seems to be a strong consensus that the available organizations in DC with such specially-trained professionals are not prepared organizationally or staffing-wise to assume 24/7 responsibilities at this time. The Council and Executive should take action now to assist these organizations in becoming equipped to handle these responsibilities in the future. Furthermore, we endorse the concept, reportedly being pursued by the Executive, to conduct some pilot operations to experiment with how to train and deploy these professionals in a safe and effective manner. We believe that once the details of these plans are carefully worked out, the deployment of mental health professionals across the District for rapid response would help keep individuals who are experiencing mental health crises safer. Therefore, we hope that the District can move forward purposefully and proactively to implement this recommendation.

With regard to enforcement of traffic infractions, we believe the use of unarmed staff of the District Department of Transportation to enforce those traffic violations that do not imminently threaten public safety¹, as the Report recommends, would be effective in reducing the potential for violent outcomes in these situations. However, if such unarmed staff of the

¹ Examples given by the Commission of regulations whose enforcement should be transferred from MPD to DDOT include Window Tint Prohibition, General Mechanical Issues, Driving with improper fenders/bumpers, and Excessive smoke, etc. (Page 102)

District Department of Transportation are used to enforce these minor traffic offenses, then we believe that the District should develop means by which the enforcement can take place without executing a physical stop of the vehicle. This could assume the form of taking a photograph or video of the offending conduct or condition as well as a photograph of the license plate and then mailing the notice of infraction to the registered address of the owner of the vehicle to be enforced in the same method as a parking ticket. We also suggest that the notice of infraction should include information about how to correct the infraction. If the vehicle's owner presents proof to the District Department of Transportation within thirty days that the physical condition of the vehicle that led to the infraction has been corrected (such as the replacement of a broken tail light), the notice of infraction should be vacated and dismissed.

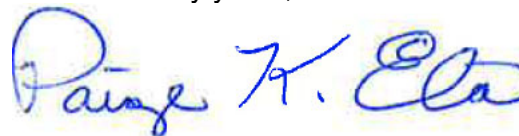
We have reservations, however, about the District's taking the further step recommended by the Commission, of stopping the enforcement of a number of offenses completely². Each of these offenses needs to be carefully evaluated on a one-by-one basis before deciding that the safety of all residents would be well served by discontinuance of such enforcement.

Finally, while we believe that the implementation of many of the Commission's recommendations will eventually result in the need for fewer resources assigned to the MPD, we believe it would be a mistake to fund these new initiatives now at the expense of the current staffing of MPD. We believe that reductions in funding should be determined through a careful analysis of the Police Department's needs rather than as a quid-pro-quo reduction to fund additional social services now. The Commission's report makes it abundantly clear that the District needs more resources devoted to social services, such as mental health, over and above what funds might later be determined to be in excess in the MPD once these functions have been successfully transferred to other organizations.

We hope that you find these recommendations helpful as you decide how to respond to the Police Reform Commission's report.

Chuck Elkins and Ben Bergmann, Commissioners for ANC3D Single Member Districts 01 and 08, are hereby authorized to serve as the Commission's representative in all matters relating to this resolution, including by testifying before any hearing on this issue.

Sincerely yours,



Paige Ela, Chair

cc: Other District Council Members
Chief of Police

² Examples given by the Commission of regulations whose enforcement should be discontinued include improper bicycle safety equipment, light violations, operating unregistered, and improper riding. (Page 102)

Greetings,

My name is Armand Cuevas, ward 1 Resident and teacher in a Ward 5 school with students from almost all other wards. I'm emailing today to ask for the broad ask of Defund MPD. However, specifically speaking, there was a report released by the Police Reform Commission in April 2021 and while I have yet to read all of it, I have gone through the sections for schools and trusting and investing in communities.

For schools, as a teacher myself, I've witnessed tons of fight and broken up several of them myself. Sometimes, the security guard was there to help but most of the time, it was other staff who stopped the fight. One time, I was able to de-escalate a situation that didn't have any fight or physical altercation, just heated exchanges of words. The situation was de-escalated, but as soon as police came into the room, my student was then re-energized and became aggressive again. We do not need police in schools. We do not need security guards. Their mere presence makes students feel unsafe, or feel like they themselves are dangerous. Instead, these uniforms can be exchanged for school apparel and our security guards can be properly trained in mental health, de-escalation, and furthermore be included in school culture and become truly integrated into the school. When that happens, instead of being reactive, they can be proactive in creating safe spaces, building relationships between students and adults, and repairing relationships between students. Lastly, mental health needs to be funded heavily as well given the comedown from the ongoing mental health crisis from the ongoing COVID-19 pandemic. Replace police/security guards in our schools with behavior technicians, culture and climate workers, and mental health professionals.

Lastly, we need to trust and invest in our communities more. Police are far removed compared to neighborhood activists and organizers, local church and business leaders, school leaders, violence interruptors, and so on. Police should not be doing stop and frisk. Armed police should not be pulling over people for traffic violations. Stop and frisk needs to stop point blank. Traffic violations can be shifted to DDOT as studies have shown armed police just escalate traffic stops, sometimes into fatal scenarios. Police should not be handling mental health emergencies or homelessness issues. That should be left to mental health professionals and homelessness advocates

Defund the police and REINVEST in our communities.

--

Armand Cuevas
Dunbar High School
9th Grade Academy | Algebra 1
armand.cuevas@k12.dc.gov

**DC Council Committee on the Judiciary and Public Safety and
Committee of the Whole
Joint Public Hearing on the Recommendations of the D.C. Police Reform
Commission**

May 20, 2021

Co-Authored by Olivia Blythe and Nada Elbasha

Abolish the Mandatory Domestic Violence Arrest Law

DC Justice Lab recommends repealing the mandatory domestic violence arrest law for Washington, D.C. (D.C. Code § 16-1031), in accordance with the D.C. Police Reform Commission's recommendation (at page 45 of *Decentering Police to Improve Public Safety*). We propose this recommendation to center the voices of survivors who have stated that this law harms them more than it protects them. Truly believing survivors means trusting their choice of navigating their relationship during some of its most dangerous moments. Mandatory arrests strip survivors of their expertise and agency over the relationship. Abolishing the mandatory arrest law empowers survivors to make autonomous choices about their safety and prioritizes how a survivor would like to handle their family dynamics.

Olivia and Nada are abolitionist intersectional feminists and professional advocates working with those impacted by acute and historical trauma, interpersonal violence, and state sanctioned violence. Olivia and Nada have spent 5 years each in the domestic and intimate partner violence services field and have worked with survivors of multiple marginalizations and from various populations. Their work solidifies the illegitimacy of the carceral response to domestic and intimate partner violence. Olivia and Nada use their expertise to cultivate a radical restructuring of advocacy and prevention which renders carceral measures obsolete.

Having trained agencies working within carceral systems on intimate partner violence prevention and response, Olivia has witnessed firsthand that additional education with a focus on trauma-informed response is not an effective method of harm reduction nor is it a way to achieve justice. Olivia's experience has confirmed that the carceral system and its "first responders" cannot be reformed into a trauma informed option for survivors and their community.

Nada has developed expertise through spending time with individuals who - from being stuck in the carceral system; rejected by social support; or fed the fallacy that domestic violence advocacy services are legitimate means of disrupting harm - were forced to

develop unsustainable coping mechanisms and forced into social ostracization. Nada has also observed the healing trajectory of survivors supported by advocacy models which de-emphasize carceral measures, and is thus able to juxtapose the perpetual harms of conflating safety with reliance on the state.

Mandatory arrests do not deter or stop intimate partner violence. Experts in the field of domestic and intimate partner violence intervention know that shame and punishment do not deter power based violence. What we see from the mandatory arrest law is that it encourages abusers to lie and coerce officers in an attempt to escape accountability and remove ownership of the harm that they cause.

DC Justice Lab proposes not only abolishing this law, but examining law enforcement's response to survivors of domestic violence. Survivors are being killed or assaulted by the officers who are called to assist them on the scene. The Interrupting Criminalization report has gathered data on this stating, "Two thirds of survivors and service providers said police use force against survivors sometimes or often during DV calls, particularly against Black survivors. More than half reported anti- Black, anti-immigrant, anti-Muslim, and anti-LGBTQ attitudes among responding officers" (Interrupting Criminalization, 2020).

For example, Melissa Ventura was killed by Arizona police after calling them for assistance when being assaulted by her partner in her home. When survivors call for the violence to be interrupted, they are met with more violence or are even killed. In DC, survivors have shared with advocates that those of them who have called the police, or have had the police called on them, experienced more violence and abuse at the hands of the police than they do in their romantic relationships. Community members often call the police on survivors, without the survivor's consent, in an attempt to help but are unaware of the dangerous impacts the mandatory arrest law has on survivors.

We are not alone in asking for this; [The DC Coalition Against Domestic Violence](#) and, most importantly, survivors in D.C are advocating for the removal of this violent law.

DC should match its standard with one of its neighboring states who has already abolished this law. Maryland does not require an officer to make an arrest in ever domestic violence case (Md. Code, Crim. Proc. § 2-204). This standardization could ease the navigation of criminal and civil systems in DC.

Mandatory Arrest Laws are Racist and Homophobic

The most marginalized have faced the brunt of this policy, which disproportionately punishes and harms queer, trans, Black, and brown survivors. “Women of color frequently have negative, abusive and even deadly experiences with police officers who are called to respond to intimate partner violence.” (Goodmark, L. 2018).

BIPOC and LGBTQIA survivors have shared that officers do not know who to arrest because of their ignorance to non heteronormative relationship dynamics and their unwillingness to examine their bias, arrogance, and lack of introspection. This ignorance prohibits officers from determining a primary aggressor, often resulting in an arrest of both people. Our recommendation does not propose training police, but rather advocates for the safety and autonomy of BIPOC and LGBTQIA during the arrest process. When survivors are arrested, the subsequent record of denoting them as the person who caused harm impacts their ability to secure housing, food, employment, and advocacy services - making it impossible to leave a violent relationship.

By mandating arrests as a response to violent relationships, The District and MPD are enabling the cycle of abuse by in turn creating ineligibility for resources that are crucial for safety.

Interrupting Criminalization cites the ACLU in their October 2020 report, Defund and DVAM, “The vast majority (89%) of survivors and service providers surveyed in one study indicated that police contact results in contact with the family regulation system (“child welfare”); 61% stated it can cause survivors to face criminal charges that could lead to deportation, and 70% reported that contact with the police “sometimes” or “often” results in the loss of housing, employment, or welfare benefits.”

Mandatory arrests not only divert important discourse away from the root causes of intimate partner violence, the mandate also empower abusers - who will not and cannot be held accountable by a system that was created for and by them - to maintain control over the relationship. This law is a false solution and in actuality causes escalated violence in relationships and in communities.

Mandatory arrests increase lethality of violence

Mandatory arrests and law enforcement involvement increase the lethality of the violence in a relationship and further isolate the survivor from community support. We see folks who cause harm engaging in behavior that is increasingly violent following the first arrest, further proving that arrests are ineffective at deterring violence. Alternatively, arrests add to an abuser’s arsenal of isolation and intimidation tactics. Escalation could

look like an abuser, whose pattern initially consisted of threats and breaking items in the home, to strangling their partner after they are arrested. Further, survivors have shared that their partners are not fearful of the mandatory arrest law and that the arrests are ineffective. Their partners often return to the home or relationship to resume the pattern of power and control.

Survivors have repeatedly shared that they are “looking for options other than punishment for the abuser, options that were not necessarily focused on separation from the abuser” (Interrupting Criminalization, 2020).

Survivors additionally state that arrests are often more traumatizing than the violence in their relationship. Arrests can also be traumatizing to other members of the family; survivors have reported watching officers coerce their children into telling them about what has occurred, only for the children to then watch those same officers arrest their parents.

There is little to no evidence that criminalization deters domestic or intimate partner violence or changes the behavior of the person who causes harm. Survivors know that when the criminal process begins they become a witness to the violence they have intimately experienced, highlighting the need to center their voices in our advocacy.

Therefore, DC Justice Lab recommends the immediate repeal of the mandatory arrest law.

Sources:

Responses from the Field: Sexual Assault, Domestic Violence, and Policing, October 2015, available at:

https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf

Andrea J. Ritchie. Domestic Violence Awareness Month & Defund Fact Sheet. October 2020

Goodmark, L. (2018). *Decriminalizing domestic violence: a balanced policy approach to intimate partner violence*. University of California Press.

Written Testimony in Support of the DC Police Reform Commission's Recommendation for Expansion of the Exclusionary Rule

DC Council Committee on the Judiciary and Public Safety and
Committee of the Whole
Joint Public Hearing on the Recommendations of the D.C. Police Reform Commission

May 20, 2021
by Elizabeth Harris

The DC Justice Lab respectfully submits this testimony to express our support for the DC Police Reform Commission's recommendation¹ to expand the exclusionary rule in accordance with the protections guaranteed by the Fourth and Fourteenth Amendments of the U.S. Constitution and by the District of Columbia Human Rights Act. Expansion of the exclusionary rule will address the inherent bias in Metropolitan Police Department (MPD) practices and the racial profiling and over-policing of Black residents, which will, in turn, promote and protect the constitutional rights of D.C. residents.

MPD officers stop and search Black citizens at a much higher rate than white citizens, indicating there is a serious problem in how MPD polices the city.² According to a recent MPD report, between July 22, 2019 and December 31, 2019, 72% of MPD's citizen stops involved Black people,³ despite the fact that only 46% of the city's population is Black.⁴ Furthermore, according to the MPD Report, 86% of people who were stopped but were not subject to a "warning, ticket, or arrest" were Black and 91% of the people searched during these types of stops were Black.⁵ MPD's Narcotics and Special Investigations Division (NSID) made similar findings in a report they published in 2020, that is, Black people were stopped and searched for drugs with much higher frequency than their white counterparts.⁶ These statistics clearly indicate that MPD is over-policing people of color and suggest that the department is racially profiling.

The over-policing of Black residents stems from bias, a prejudicial belief that Black residents are more likely to be engaged in illegal activity. This bias can be *conscious*, meaning

¹ D.C. Police Reform Commission, *Decentering Police to Improve Public Safety* (April 1, 2021) (available at bit.ly/dcpolicereform) at page 185; *see also id.* at 100 (discussing *United States v. Whren*).

² ACLU-DC & ACLU ANALYTICS, *Racial Disparities in stops by the D.C. Metropolitan Police Department: Review of Five Months of Data*, 2 (Jun. 2020)

https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf (" . . . MPD's stop practices unfairly over police the Black community, and that these practices require serious scrutiny and structural change.").

³ METROPOLITAN POLICE DEPARTMENT, STOP DATA REPORT, 13 (Feb. 2020)

<https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/Stop%20Data%20Report.pdf>.

⁴ *2020 Demographics*, D.C. Health Matters, Jan. 2020, <https://www.dchealthmatters.org/demographicdata>.

⁵ *See supra* note 1.

⁶ NATIONAL POLICE FOUNDATION, METROPOLITAN POLICE DEPARTMENT NARCOTICS AND SPECIALIZED INVESTIGATION DIVISION, 8 (Sep. 2020)

<https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/National%20Police%20Foundation%20MPD%20NSID%20Report%20September%202020%20Final.pdf>.

deliberate and based on animus towards a specific group;⁷ *implicit*, meaning an unthinking, but still impermissible negative association;⁸ *authoritarian*, meaning over-policing of neighborhoods that the officer, informed by bias, believes need more protection or guidance;⁹ *structural*, meaning poverty is penalized or used as a basis for discrimination;¹⁰ or *inductive*, meaning an officer makes overgeneralizations about a certain group and acts on these beliefs.¹¹ It is important to identify the various forms of bias that consciously and unconsciously inform the actions of officers and police departments, often expressed through racial profiling, to underscore the need for enhanced constructional protections. This, combined with the over-policing statistics mentioned above, makes it clear that an expanded exclusionary rule is necessary to combat racial profiling perpetuated by MPD.

Expanding the exclusionary rule would help protect people, particularly people of color, from the equal protection violations that result from over-policing compelled by racial profiling. While the U.S. Supreme Court has not decided exactly how the exclusionary rule should apply to racial profiling, some lower courts, including in Texas¹², New Jersey¹³ and the Sixth Circuit,¹⁴ have held that the exclusionary rule should be applied to evidence obtained through racial profiling. In adopting the Police Reform Commission's recommendation, Washington, D.C. would join these other jurisdictions that have taken necessary steps to ensure all citizens receive equal protection under the laws and are not discriminated against on the basis of race, ethnicity, or socioeconomic status. This is a right guaranteed by the U.S. Constitution¹⁵ and by the Code of the District of Columbia.¹⁶ Given the rampant racial profiling and over-policing, it is hard to see how this fundamental right can be upheld and protected without expanding the exclusionary rule. We therefore urge you to adopt the Commission's recommendation and expand the exclusionary rule.

⁷ See Associated Press, *Embattled Town of Beloit Police Chief Resigns*, MILWAUKEE J. SENTINEL, Jan. 18, 2011, <http://archive.jsonline.com/news/wisconsin/114148969.html> (describing a case of conscious bias in the Milwaukee Police Department).

⁸ Anthony G. Greenwald and Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, CALIF. L. REV. 94 (July 2016).

⁹ Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 371 (1987) (discussing the differences in police interactions with Black and white populations, especially in context of the legacies of slavery).

¹⁰ Jessica Brand, *How Fines and Fees Criminalize Poverty: Explained*, THE APPEAL, July 16, 2018, <https://theappeal.org/fines-and-fees-explained-bf4e05d188bf/> (explaining how fines and fees from anything from unpaid traffic tickets to court fees can have disastrous effects on the poor, especially poor people of color.)

¹¹ Lawrence Rosenthal, *Gang Loitering and Race*, 91 J. CRIM. L. & CRIMINOLOGY 99, 100 (2000).

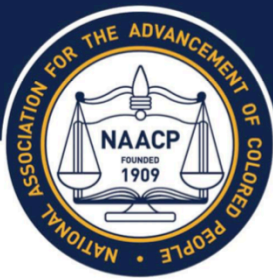
¹² *Pruned v. State*, 104 S.W.3d 302 (Tex. App., 2003).

¹³ *State v. Lee*, 190 N.J. 270, 277, 920 A.2d 80, 84 (2007).

¹⁴ *United States v. Navarro-Camacho*, 186 F.3d 701, 711 (6th Cir. 1999).

¹⁵ U.S. Const. amend. XIV, § 1

¹⁶ D.C. Code Ann. § 2-1402.01 (“[e]very individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations.”)



NAACP *National Association For The Advancement Of Colored People*

Washington, DC Branch

1000 U Street, NW • Suite 100 • Washington, DC 20001

NAACP DC Branch Testimony

**Council of the District of Columbia
Judiciary and Public Safety and the Committee of the Whole**

Friday, May 28, 2021

B24-112, the “White Supremacy In Policing Prevention Act of 2021”

Chairman Allen and members of the Committee on the Judiciary and Public Safety, thank you for holding this hearing today to consider the “White Supremacy In Policing Prevention Act of 2021.” My name is Akosua Ali and I am the President of the NAACP Washington, DC Branch. The NAACP DC Branch strongly supports and urges your prompt enactment of the ***“White Supremacy In Policing Prevention Act of 2021.”***

For 112 years, the NAACP has championed the fight for racial justice as the nation’s oldest and largest civil rights organization. White supremacy is the single most existential threat to our democracy. It undermines the safety, security and progress of all Americans. White supremacy is the conscious or unconscious belief in the inherent inferiority of some and the superiority of white people, white beliefs and/or white values. The ingenuity of white supremacy is that it doesn’t require a white person to implement or uphold white supremacist ideologies. White supremacy is not limited or restricted to white people or an individual person, but the ideals are embedded into the fabric, history and systems of this country.

The ingenuity of white supremacy is that it doesn't require a white person to implement or uphold white supremacist ideologies. White supremacy is not limited or restricted to white people or an individual white person. During slavery, black slavecatchers worked to police and oppress black slaves. During Jim Crow, some blacks and whites embraced white supremacist ideologies of white superiority and black inferiority evident through opposition to the fight for civil rights. White supremacists are of all races, ages and ethnicities, they may ride bicycles or drive pick-up trucks, they may drink flavored water or drink beer, they may call themselves vegans or be meat eaters, they may smile and call me a friend, while upholding white supremacist ideologies or systems designed to rob us of our inalienable right to live. Today, white supremacy is not limited to overt racist yelling slurs or wearing t-shirts, but the true threat of white supremacy is embedded in the criminal justice system, healthcare systems, education systems and policing in this country. We all have a critical role to play because implicit bias fuels white supremacy in our Government, corporations and within our homes.

Today's domestic terrorists do not always use a gun or bomb, instead, they work within our systems to deny your application for a license, permit or grant. Today's white supremacists are concealed weapons, often sitting behind desks and making decisions that severely disrupt and may end your life. In the last 18 months alone, white supremacy has led to a disproportionate amount of COVID-19 cases for African Americans and countless murders at the hands of the police.

Since the beginning of Black history in this country, we have experienced negative relations between black communities and policing enforcement entities. Beginning with slavery to Jim Crow through racial profiling by police, the murder of George Floyd and today's movement to protect Black lives through demanding a racial awakening for justice in communities across the

nation, there has been deep rooted hostility, abuse and mistrust. There have been more than 1,000 instances of police brutality at Black protests since the murder of George Floyd. However, our Government and intelligence communities failed to deploy adequate police or troops to the violent riot led by white supremacists, neo-Confederates and extremists in the U.S. Capitol on Jan. 6 resulting in the death of police. Police brutality is not limited to White police officers brutalizing black people. White supremacist ideologies can influence subconscious and implicit biases across all races, it is extremely dangerous when those biases impact policing.

While this legislation is directing the D.C. Auditor to assess white supremacy and other hate groups within MPD, this is only a start. The NAACP DC Branch believes white supremacy, racism and bigotry have no place in law enforcement or any government agency. Racists, bigots or people of any race that harbor white supremacist ideologies cannot be allowed to protect or defend our communities. On behalf of the Washington, DC Branch of the NAACP, we strongly urge you to enact the “White Supremacy In Policing Prevention Act of 2021.” Thank you!

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Akosua Ali".

Akosua Ali
President
NAACP DC Branch

Testimony of Shayna Druckman
Student in the DC Community
Judiciary & Public Safety & Committee of the Whole Public Hearing
May 20, 2021

Good afternoon Chairman Allen, Committee members and staff. Thank you for hearing my testimony at the Judiciary & Public Safety & Committee of the Whole Public Hearing. My name is Shayna Druckman. I am a student at George Washington University working on a course project related to protecting youth who are taken into police custody.

I am testifying because young people in the District of Columbia and across the US are vulnerable to self incrimination due to a lack of legal representation when taken into custody and questioned by the police. Most juveniles are not developmentally ready to have a full understanding of their Miranda Rights especially when in the pressured-filled environment of a police station. According to [data](#) from the National Registry of Exonerations at the University of Michigan, youth of ages 14 and 15 who were later exonerated, falsely confessed in 57 percent of cases. Further, a [study](#) by University of Nevada Law, found that lower IQ corresponds with lower comprehension and suggestibility, both of which are risk factors for false confessions and [miscarriages of justice](#).

This semester, I worked with classmates to compile research on this topic. One of my peers conducted interviews with youth and adults in the DMV area who had various experiences with the juvenile justice system. Though their stories were different, many interviewees expressed false confidence in their understanding of their Miranda Rights at the time of their respective interactions with police. In hindsight, many admitted to not fully understanding their rights and often being held without the chance to consult anyone who might be able to help them.

In the UK, young and vulnerable individuals may request the presence of an appropriate adult, who accompanies them through questioning and pre-trial detention serving as a safeguard for their well-being and rights. Appropriate adults cannot provide legal counsel, but they are accompanied by lawyers who can provide this guidance. A member of my team had direct experience as an appropriate adult in the UK where she resides. She expressed concern that such a basic safeguard was not present in the US juvenile system as it provided a necessary check on police power.

States like California and New York have taken steps to implement juvenile custody reform and cities like [Chicago](#) have even attempted to provide station house counsel for detainees, but all efforts have been limited in scope and practical application. DC has the opportunity to make this shift in the law and serve as a model for other states to follow. The organization, Fair Trials, released a report last year detailing the possibilities within station house counsel like redirection of youth from the justice system to restorative programs and expansion of access to essential resources. This is a step in the right direction for addressing root causes of crime and police interactions.

I encourage the DC council to adopt Recommendation 2 (a), (b), and (c) of section VI of the Police Reform Commission's 2021 report. This reform would change the way Miranda Rights are applied to children when brought into police custody. It would amend the "Interacting with Juveniles" General Order and the Council should amend DC Code § 16-2304 to adjust the language to make Miranda Rights easier to understand when read to a young person. It would also require the presence of legal counsel during pretrial interrogation. Recommendation 2(b) would amend DC Code § 16-2316, making all statements made by youth prior to a knowing waiver of Miranda Rights when accompanied by a legal professional, inadmissible in court. Finally, the reform would ensure access to legal counsel for *all* detainees through a partnership between the Public Defenders Service and Metropolitan Police Department. I believe these measures would protect youth from self-incrimination and [other avenues into the justice system](#), while instead prioritizing restoration.

This concludes my testimony. Thank you for your consideration.

Committee on the Judiciary & Public Safety and Committee of the Whole

Re: Police Reform Commission Report; B24-094, the “Bias in Threat Assessments Evaluation Amendment Act of 2021;” B24-0107, the “Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jump-Out Searches Act of 2021;” B24-0112, the “White Supremacy in Policing Prevention Act of 2021;” and B24-0213, the “Law Enforcement Vehicular Pursuit Reform Act of 2021.”

Written Testimony of Kristin Eliason, *NVRDC’s Director of Legal & Strategic Advocacy*

Hearing Date: May 20, 2021

Written Testimony Submitted: May 28, 2021

Thank you Chairman Allen, Chairman Mendelson, committee members, and staff for your continued commitment to the safety of DC residents. Founded in 2012, the Network for Victim Recovery of DC (NVRDC) has provided holistic services, including free legal representation, advocacy, and case management, for over 5,000 crime victims. Many of our clients choose to participate in or engage with the criminal legal system, from reporting to police to providing victim impact statements at a defendant’s sentencing. To ensure those survivors have a trusted support system, NVRDC maintains a necessary partnership with policing agencies in the District. Additionally, many of our clients are afraid to engage with the criminal legal system or do not wish to engage with it. We feel it is not only important to ensure effective, just, and accountable policing for those survivors who choose or must engage with the current criminal legal system, but to find and invest in alternatives to our criminal legal system and long-term solutions and alternatives to the ways in which our society responds to crime and addresses the underlying reasons for crime.

Police Reform Commission Report

As stated above, NVRDC currently has partnerships with law enforcement operating within the District; however, our work over the past 9 years supporting thousands of people who have experienced crime, conducting community outreach, and learning from community-based organizations and advocates, underscores that as a community we must begin to look beyond the current systems in place for responding to crime. Moving toward alternatives to policing is a crucial step in creating a community that is both free from the harms that policing fails to solve and the harms caused by over-policing. The Police Reform Commission’s Report “Decentering Police to Improve Public Safety” (“Report”) offers community-based alternatives to avoid over reliance on police for emergency response. As the Report details, the Metropolitan Police Department (MPD) history of over-policing historically and continually disparately impacts the District’s Black residents, and fails to make DC a safer place.¹ NVRDC supports the Report’s overall goal to approach public safety from a new perspective and create new emergency responses

¹ Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission at 9-11 (April 1, 2021).

that do not needlessly criminalize and harm members of our community in crisis.

As an organization that serves crime victims, NVRDC believes they should not have to choose between accessing safety and interacting with law enforcement. People who experience crime often call 911 because they want to be safe, not because they want the police or criminal legal system involved. Calling 911 often pushes crime victims into engaging with entities and systems they may fear, do not trust, and that are not safe for them. The countless examples of Black and brown people who have been murdered or harmed by police responding to 911 emergency calls for safety and the cooperation between police and federal immigration authorities are two of many examples why victims in our community may not want to call 911. The lack of nonpolice emergency response options prevents crime victims from accessing critical resources following their victimization. To truly support the District's residents who experience crime, there must be safe, trained, nonpolice responses to emergencies.

We want to highlight that it is not enough to create emergency responses that involve specialized nonpolice personnel (e.g. behavioral health professionals and domestic violence counselors)—we must also shift the current policing philosophy that underpins crisis response. The goal should not be to replace one responder with another that acts in the same manner. A nonpolice response must be trauma-informed, culturally humilitive, and competently trained to respond appropriately in a way that does not re-traumatize survivors or force them into government and legal systems. Furthermore, we must be responsive to the underlying causes of violence, such as creating social structures that offer stable, affordable, and sustainable housing, and employment and educational opportunities.

NVRDC also supports the Commission's recommendations that address some of the circumstances that may lead to crime. It is critical to fund and expand community-based social services to support District residents experiencing crisis, including those with mental health conditions, substance use disorders, and those experiencing housing or financial instability. A punitive, carceral response to these systemic issues has not helped solve them, nor has it helped drastically reduce crime. Crime victims are not a monolith--their desires, goals, and needs vary. When developing alternatives to policing and the criminal legal system, it is important crime victims are involved in those conversations. While some victims still desire a punitive, carceral response to crime, it is often because there are currently few alternatives to the criminal legal system.

NVRDC joined the DC Coalition Against Domestic Violence's ("DCCADV") position statement from January 2021 on police response and domestic violence,² and NVRDC fully supports DCCADV's May 2021 response to the Report³. In particular, NVRDC wishes to highlight DCCADV's discussion of the need for increased funding for alternatives to police, such as

² [The Intersection of Police Response and Domestic Violence in DC](#) (January 22, 2021).

³ [A Survivor Centered Approach: Response to the Recommendations of the Police Reform Commission](#) (May 4, 2021).

domestic violence advocates,⁴ to ensure programs can actually fulfill a first responder role. The District must invest in sustainable resources. We cannot ask advocates to do the work with less funding than police historically have received and continue to receive. Nonpolice response programs need enough funding to pay their responders a livable wage and to ensure a commitment to robust, thorough training. Paying first responders a livable wage with benefits will decrease turnover and allow responders to engage in this work for a longer time, thereby creating consistency and building trust within the community.

Additionally, NVRDC wishes to emphasize DCCADV's recommendation that DC must have BIPOC-led restorative justice programs that are survivor-centered, community-based, and wholly unaffiliated with the criminal legal system. Not only is this critical for domestic violence survivors, as DCCADV discusses, but also for victims of any kind of crime. As an organization providing crisis counseling and intervention, case management, advocacy, and legal assistance to victims of crime, we know that they deserve options beyond engaging the criminal legal system. It is insufficient to employ nonpolice responses to crisis, if there are not also community-based programs that promote healing and accountability in the wake of such crises. Such programs should include restorative justice options and processes for communities experiencing violence--with community circles that involve communities, victims, and those who have caused harm.

B24-94 “Bias in Threat Assessments Evaluation Amendment Act of 2021” and B24-112 “White Supremacy in Policing Prevention Act of 2021”

Bill 24-0094 “Bias in Threat Assessments Evaluation Amendment Act of 2021” (“B24-94”) and Bill 24-0112 “White Supremacy in Policing Prevention Act of 2021” both require studies to understand the extent of bias and white supremacist support among MPD actions and personnel.

NVRDC supports both bills and their efforts to gain more information and understanding of how to prevent and respond to bias and hate, especially in the criminal legal system. However, there need to be concrete steps for how the information gathered in these studies are used. For example, Bill 24-0094 states that the Office of the Attorney General will conduct a study to understand if MPD engaged in biased policing and, if so, make recommendations on how to prevent future bias in threat assessments. We believe the bill must go a step further and create a mechanism for those recommendations to be reviewed and implemented. It is not enough to acknowledge that a problem exists and suggest recommendations. For these studies to be truly useful in protecting District residents from harm from police, then there must be concrete action taken based on the results of these studies to bring about change within MPD.

B24-107 “Metropolitan Police Department Requirement Of Superior Officer Present At Unoccupied Vehicle Search – No Jumpout Searches Act of 2021”

⁴ As NVRDC discussed in its testimony for B24-75, Expanding Supports for Crime Victims Amendment Act of 2021, NVRDC believes there must be victim support roles in community response to all kinds of crime, not solely domestic violence..

NVRDC supports Bill 24-0107 and its effort to create accountability around searches of unoccupied vehicles. This bill prohibits officers from conducting searches of unoccupied vehicles unless a superior officer is present, body-worn camera is on, and the superior officer gives verbal authorization for a search. The bill further would allow a vehicle owner to sue a police officer for failing to follow these requirements. NVRDC particularly supports this provision; as many testified at the May 20, 2021 hearing, having an enforcement and accountability mechanism is crucial in addressing the harms caused by police in our community.

B24-213 “Law Enforcement Vehicular Pursuit Reform Act of 2021”

NVRDC believes Bill 24-0213 is a positive step in ending dangerous, unwarranted police action in the form of unnecessary vehicle chases and unsafe pursuit tactics. This bill recognizes that police engage in harmful behavior that runs counter to principles of public safety. We encourage the Council to adopt a private right of action as part of this Bill as is in Bill 24-0107.⁵ If an officer engages in an unnecessary pursuit of a vehicle in a non-emergent situation, and that pursuit results in harm to third parties or to the individual being pursued, there must be an instrument to hold the officer accountable. Those who are injured and the family members of those who die from these dangerous and unlawful police practices should have the ability to sue an officer who disobeys the law. It is not enough to pass laws purporting to reform police action with no ability to ensure that officers follow those laws.

Conclusion

Thank you Chariman Mendelson, Councilmember Allen, and committee members for your work to ensure effective, just, and accountable policing for survivors who engage with the criminal legal system, but also your work in finding alternatives to that system and long-term solutions and alternatives to how the District responds to crime and creates public safety. NVRDC enthusiastically supports the Police Reform Commission’s recommendations to decenter police in public safety, and shift resources to nonpolice responses. NVRDC believes that the four bills discussed in this testimony are positive steps towards holding police accountable. However, these types of laws are only a small step; accountability is not enough. We must end our police-centric approach to public safety, and invest in resources that prevent violence and that respond to crises with specialized knowledge and care. This is why NVRDC also provided oral and written testimony supporting B24-0075, “the Expanding Supports for Crime Victims’ Amendment Act of 2021,” in which NVRDC discussed the importance of having trained crime victim advocates for survivors of all kinds of crime. Finally, we understand this shift will not happen immediately and for reform in the short-term, we urge the Council to ensure that funding allocated to policing in the District be both transparent and informed by the community and include community-based priorities. Thank you again, I am happy to respond to your questions.

⁵ In addition to supporting accountability through injunctive relief put forth in Bill 24-0107, NVRDC testified in its oral and written testimony regarding Bill 24-0075 that we strongly support injunctive relief as a mechanism for holding government actors accountable when they violate the rights of crime victims.



To: Committee on the Judiciary and Public Safety, Council of the District of Columbia

From: Yasmin Vafa and Rebecca Burney

Re: Rights4Girls Comments on the Recommendations of the D.C. Police Reform Commission

Date: May 28, 2021

Rights4Girls is a human rights organization dedicated to defending the rights of marginalized young women and girls in the U.S. Based in Washington, D.C., we work at the intersection of racial justice, juvenile justice, and violence against women and girls at the federal, state, and local levels, and engage in youth development, coalition-building, public awareness campaigns, research, and training and technical assistance. Over the past several years, we have been actively involved in the passage of multiple federal laws aimed at reforming systems to improve our response to marginalized girls and providing increased funding and services to survivors of sexual violence and exploitation. We have also worked at the national and local levels to shed light on the widespread criminalization of girls of color through the publication of reports like [*The Sexual Abuse to Prison Pipeline: The Girls' Story*](#) and [*Beyond the Walls: A Look Inside D.C.'s Juvenile Justice System*](#).

We are committed to promoting youth engagement and advocacy through our series of youth workshops and sit on a number of local coalitions including the Youth Justice Project coalition, the D.C. Coalition to End Sexual Violence, and we co-lead the D.C. Girls Coalition with our partners at Black Swan Academy. In addition, in 2011, we co-founded the Girls at the Margin National Alliance—a coalition of over 200 national, state, and local organizations working across systems and disciplines to center the voices and experiences of marginalized young women and girls in policy conversations at the local, state, and federal levels.

In 2018, we published a report in partnership with the Georgetown Juvenile Justice Initiative entitled, *Beyond the Walls: A Look at Girls in D.C.'s Juvenile Justice System*, that discusses the gendered pathways leading D.C. girls into the juvenile justice system and highlights the disproportionate impact our policies have on girls of color in the District. Some of the major findings in that report were: i) Girls' arrests in D.C. have increased 87% over the past decade; ii) 97% of girls committed to the Department of Youth Rehabilitative Services (DYRS) custody are Black; iii) 86% of arrests of girls in D.C. are for non-violent, non-weapons offenses; and iv) 60% of girls arrested in D.C. are under age 15.¹

¹ Yasmin Vafa, Eduardo Ferrer, et. al, [*Beyond the Walls: A Look at Girls in D.C.'s Juvenile Justice System*](#), Rights4Girls & Georgetown Law Juvenile Justice Initiative (2018).

In the report, *Decentering Police to Improve Public Safety: A Report of the D.C. Police Reform Commission*, the D.C. Police Reform Commission (“Commission”) put forward a number of policy recommendations that center the voices of communities most impacted by policing in the District and allow us to reimagine what public safety should look like. Rights4Girls had the opportunity to engage with the Commission around issues of gender-based violence and the policing of girls in D.C., and we support many of their final recommendations. Today, we submit this testimony to highlight a few of the specific reforms that we think are most vital for girls in the District.

1. Crisis intervention and services for survivors of sex trafficking must be expanded. Police should be a gateway to services rather than a pathway to jail for those in the sex trade.

The sexual exploitation of youth is a major problem in the District of Columbia and it has only been exacerbated by the COVID-19 pandemic. We urge the Council to take immediate steps to ensure that survivors are provided with resources and supports. This includes scaling up funding to the Office of Victim Services and Justice Grants in order to expand community-based, 24-hour crisis responders with links to emergency shelter—with funds being prioritized for experienced and survivor-led service providers such as Courtney’s House. These investments must also include changes to the 911 system and include special training for dispatchers as well as protocols for deploying specialized community-based crisis responders. We strongly support the Commission’s recommendations to invest in resources for trafficking survivors and ensure that police who come in contact with survivors are diverting them to appropriate services rather than criminalizing their behaviors.

Trafficking is a major pathway into the juvenile justice system for girls and police often facilitate their journey to jail. In spite of the fact that the District has a “safe harbor” law that protects minors from being arrested for prostitution, youth are often arrested for behaviors stemming from their exploitation. We agree with the Commission that the overcriminalization of these survivors for status offenses and normal adolescent responses to trauma must end. The Metropolitan Police Department (MPD) and external oversight bodies must hold police officers accountable for fulfilling their duty to refer trafficked youth to service providers. Arrests should be a genuine last resort. In addition, given the continuum between child sex trafficking and adult prostitution, the Council should amend this portion of the law (D.C. Code Sec. 22-2701(d)) to require police officers to refer a person of any age to services if they disclose that they are a victim of sex trafficking or that they seek support to safely exit the sex trade. Sexual exploitation does not end on a person’s 18th birthday and many adults in the sex trade first entered the sex trade as minors. Unfortunately, police officers are rarely sympathetic to adult survivors.

When asked about their experiences with MPD officers, one youth said that she “hasn’t had any positive experiences since she turned 18.” Another young girl described an instance where MPD officers handled her so aggressively at school that they dislocated her shoulder. Youth report that MPD are rarely sympathetic to those over 18 who are engaged in the sex trade even if they are being exploited. As one young woman said, police are “not understanding that

trauma makes youth not trusting or reluctant to cooperate.” All of the youth we spoke with described numerous negative experiences with police ranging from harassment to physical assault, and felt that police should be required to have regular trainings to help address this behavior.

The number one point that trafficking survivors have expressed to us is that the police need culturally competent, survivor-led trainings about the signs and underlying dynamics of sex trafficking, as well as training to address the racism, sexism, and implicit bias in the police department. Trafficked youth and especially girls have told us that police often do not understand the dynamics and trauma associated with trafficking and especially familial trafficking. The interactions between the MPD officers and trafficking survivors also demonstrate how vulnerable young people are often subjected to appalling, dehumanizing, and sometimes exploitative treatment by police officers due to stigma and victim blaming of those in the sex trade.

Sadly, this is a common trend throughout the country. A recent Nevada study on the interactions between police and commercially sexually exploited youth found that most of the survivors were arrested and transported to juvenile detention for processing rather than given services afforded to victims of a crime.² Numerous young people in the study experienced violence and threats from arresting officers and results of the study suggest that an officer’s perception of the youth influenced how they were treated, with those who did not fit the narrative of a “perfect victim” experiencing far more negative police interactions.³

2. The Council must re-establish Police Free Schools because the presence of police officers in schools makes youth feel unsafe and hinders both learning and positive youth development.

We support the Commission and youth leaders across the city who have called for Police Free Schools and believe that we need to move away from a culture that criminalizes youth of color for normal adolescent behavior and shift to a culture that promotes accountability, safety and youth agency. Girls are often overlooked in critical conversations around the school-to-prison pipeline and the racial achievement gap in education. However, girls of color suffer from many of the same problems as boys of color and struggle with sexism, systemic poverty, racial bias, gender violence, and trauma. In particular, Black girls⁴ are increasingly being referred to the juvenile justice system as a result of school discipline policies that criminalize them for normal adolescent behavior, for expressing themselves, or for minor misbehaviors that could be addressed within the school system and without a police response.

² Alexa Bejinariu, M. Alexis Kennedy & Andrea N. Cimino, [*“They said they were going to help us get through this ...”: documenting interactions between police and commercially sexually exploited youth*](#), Journal of Crime and Justice (2020), p.12.

³ *Id.*

⁴ According to the 2018-2019 report on school discipline by OSSE, among those who were expelled, Black/African-American students make up 95 percent of the population even though they are only 67 percent of the entire student population. Thus, it is essential to look at the racial dynamics in D.C. and the impact disciplinary procedures have on Black girls. [*State of Discipline: 2018-2019 School Year*](#), D.C. Office of the State Superintendent of Education, p. 1.

Girls of color and especially Black girls are often disciplined for dress code⁵ or behavior violations that result from implicit and explicit gender bias on the part of teachers, administrators, and school resource officers.⁶ They are also affected by additional factors such as sexual harassment and violence at or on the way to or from school, pregnancy, caretaking responsibilities, and undiagnosed learning disabilities that all contribute to truancy and school pushout.⁷ Because schools can act as an important protective buffer for youth, exclusionary discipline renders girls especially vulnerable to abuse, sexual exploitation, and juvenile justice involvement.⁸ Studies have shown that police in schools do not make Black youth feel safer⁹ and the District must invest in creating school environments where students feel comfortable and supported.

Police officers are not equipped to handle trauma experienced by youth in D.C. and their involvement in altercations and routine disciplinary measures often escalate the situation. Youth need more counselors and social workers in schools who can help them work through any challenges they may be experiencing, not more police. Investments in socio-emotional supports and mental health are particularly important as youth begin to re-enter schools after a year filled with trauma due to COVID-19.

3. The city should adopt a developmentally appropriate approach to the policing of youth by decriminalizing status offenses, implementing more robust protections when applying *Miranda* rights to children, and training officers on adolescent brain development and how youth responses are impacted by racial bias and trauma.

We have worked extensively with girls of color in the District to help elevate their experiences and make sure that their needs are represented in policy decisions, while also providing the tools necessary for them to be their own advocates for change. One of the major concerns youth express is that police officers do not treat them with respect or understand that they are children. Among youth of color, there is often anger and frustration that behaviors that they are criminalized for are often considered “normal adolescent behavior” for their white peers. In D.C., our research found that Black girls are arrested at rates 30 times that of white girls and white boys.¹⁰

Both nationally and locally, girls are overwhelmingly involved in the juvenile justice system through non-violent and misdemeanor offenses.¹¹ Those arrests make up 86% of girls in the D.C.

⁵ [*Dress Coded: Black girls, bodies, and bias in D.C. schools*](#), National Women’s Law Center (2018).

⁶ Monique Morris, *Pushout: The Criminalization of Black Girls in Schools* (The New Press, 2015), pp. 120-32.

⁷ *Id.* at 49; Karen Schulman, Kayla Patrick, & Neena Chaudhry, [*Let Her Learn: Stopping School Pushout for Girls with Disabilities*](#), National Women’s Law Center (2017), p. 1; Kelli Garcia & Neena Chaudhry, [*Let Her Learn: Stopping School Pushout for Girls who are Pregnant or Parenting*](#), National Women’s Law Center (2017), p. 1.

⁸ Morris, *supra* note 6, at 101; Francine T. Sherman & Annie Balck, [*Gender Injustice: System Level Juvenile Justice Reform for Girls*](#) (2015), p. 16; Kimberlé Crenshaw, Priscilla Ocen & Jyoti Nanda, [*Black Girls Matter: Pushed Out, Overpoliced, and Underprotected*](#), African American Policy Forum and Center for Intersectionality and Social Policy Studies (2014), pp. 10, 24.

⁹ Claire Bryan, [*Police don’t make most black students feel safer, survey shows*](#), Chalkbeat (Jun. 8, 2020).

¹⁰ Vafa, *supra* note 1.

¹¹ *Id.*

juvenile justice system.¹² Girls are far more likely than boys to be arrested for status offenses such as truancy, curfew violations, and running away.¹³ Often, these behaviors are in response to traumatic experiences, home instability, or feeling unsafe at school. Many of these issues derive from sexual exploitation or abuse.¹⁴ In one study, three fourths of justice-involved girls reported that their first experience of abuse was at age 13,¹⁵ making it unsurprising though alarming that arrests of 13 to 15-year-olds is a primary driver of girls into D.C.'s juvenile justice system.¹⁶

Girls are disproportionately arrested and detained for status offenses. Whereas girls only account for 15% of the juvenile detention population, they are 36% of youth detained for status offenses.¹⁷ Truancy and running away are the two most common status offenses for which girls are arrested and both are often tied to experiences of violence. Research has shown that running away is a common response to escaping an abusive home or foster care placement, a natural response to trauma, or the result of trouble identifying safe adults.¹⁸ Truancy is often due to girls' experiences of sexual violence, unidentified learning disabilities, pregnancy or parenting concerns, trouble with peers, and mental health challenges. Unfortunately, both truancy and running away make girls vulnerable to exploitation. Thus, it is imperative that the District respond to these behaviors with compassion, support, and resources and not involve the juvenile justice system.

Status offenses are only considered a law violation because of a youth's status as a minor and fail to consider normal adolescent responses to trauma and gender-based violence. Of all the recommendations put forth by the Commission, the decriminalization of persons in need of supervision (PINS) offenses and reinvestment in supportive services for youth will have the greatest impact on girls who come in contact with the juvenile justice system. We strongly encourage the Council to adopt the policies put forth by the Commission and the District of Columbia Juvenile Justice Advisory Group (JJAG).

Youth interrogations by police is another area in which the District has failed to account for the impact that systemic racism, trauma, and limited cognitive development has on young people. It is well documented that children cannot meaningfully understand their *Miranda* rights because their cognitive abilities are still developing. One study found that only 20% of youth adequately understood their *Miranda* rights and empirical evidence shows that sufficiently comprehending *Miranda* requires at least a tenth-grade reading level.¹⁹ Anecdotally, we have had conversations with several youth who did not understand that police could use their statements against them even though they did not have an attorney or parent present. Thus, we support the Commission's recommendation to adopt more robust protections and procedures when applying *Miranda* rights

¹² *Id.* at 27.

¹³ *Id.* at 7.

¹⁴ Malika Saada Saar, Rebecca Epstein, et. al, [The Sexual Abuse to Prison Pipeline: The Girls' Story](#), Rights4Girls, Georgetown Law Center on Poverty and Inequality, & Ms. Foundation (2015), p. 12.

¹⁵ *Id.* at 7.

¹⁶ Vafa, *supra* note 1, at 31.

¹⁷ Rights4Girls, [The Sexual Abuse to Prison Pipeline](#) factsheet (2020).

¹⁸ Vafa, *supra* note 1, at 8.

¹⁹ Katrina Jackson & Alexis Mayer, [Demanding a More Mature Miranda for Kids](#), D.C. Justice Lab & Georgetown Juvenile Justice Initiative (2020), p.1.

to youth. Police must use developmentally appropriate language when reading a child their *Miranda* rights and youth must have an attorney present in order to waive their rights.

The inability of children to fully comprehend their *Miranda* rights has disastrous consequences and often leads to wrongful convictions and severe dispositions. Nationally, children account for only 8.5% of arrests but account for nearly one-third of false confessions.²⁰ In D.C., where Black youth are disproportionately stopped, searched, and arrested by police, our current *Miranda* policy has racial justice implications as well. Decades of racialized policing, contemporary media coverage of police brutality against Black people, and personal experiences of police harassment and violence, shapes the views that Black youth have towards police. As a result, this “distrust, fear, and even hostility between police and youth of color exacerbate the psychological atmosphere that undermines the voluntariness of *Miranda* waivers.”²¹ Youth may waive *Miranda* simply to get out of the interrogation room or to end interactions with a police officer. Thus, *Miranda* warnings alone are not effective in limiting the coerciveness of a police interrogation.

Girls in particular would benefit from additional *Miranda* protections due to the excessive amount of trauma most have experienced prior to arrest and interrogation. Girls involved in the juvenile justice system experience adverse childhood experiences or ACEs at incredibly high rates. Further, system-involved girls experience more of these issues than their male counterparts with 45% of girls experiencing five or more ACEs.²² Black girls, who represented 97% of newly committed youth to DYRS between 2007 and 2015, reported the highest rates of single and multiple ACEs.²³ Seventy-three percent of girls who end up in courts have histories of physical or sexual violence.²⁴ Girls in the juvenile justice system are more than four times more likely than boys to have been sexually abused.²⁵ Research has shown that when a child faces repetitive trauma and toxic stress, their brain develops behaviors necessary for survival. Over time, these behaviors biologically alter the brain and the parts controlling fear and anxiety grow while the parts controlling logic and critical thinking shrink.²⁶ Trauma not only makes youth more susceptible to health problems such as asthma, but it impairs cognitive development and the capacity to fully understand one’s *Miranda* rights. Additionally, the coercive and aggressive nature of police interrogations can be triggering for girls who have experienced significant trauma or suffer from Post-Traumatic Stress Disorder (PTSD).

While there are limited studies on how girls are impacted by police interrogations and the likelihood of waiving *Miranda*, most of the research found no differences between males and females’ understanding and/or appreciation of their *Miranda* rights.²⁷ However, justice personnel

²⁰ *Id.*

²¹ *Id.* at 2.

²² Vafa, *supra* note 1, at 35.

²³ *Id.* at 36.

²⁴ Francine T. Sherman, [*Pathways to Juvenile Justice Reform: Detention Reform and Girls Challenges and Solutions*](#), Annie E. Casey Foundation (2005).

²⁵ Saar, *supra* note 14, at 8.

²⁶ Nadine Burke Harris, *The Deepest Well: Healing the Long-term Effects of Childhood Adversity*, (Houghton Mifflin Harcourt Publishing Company, 2018); Deborah Lee Oh, et. al., [*Systematic review of pediatric health outcomes associated with childhood adversity*](#), BMC Pediatrics (2018) 18:83.

²⁷ Barry C. Feld, [*Questioning Gender: Police Interrogation of Delinquent Girls*](#), 49 WAKE FOREST L. REV.

describe significant gender differences while in the interrogation room. In one Minnesota study, police often described girls as “more likely to talk, less likely to invoke their rights.”²⁸ One officer even stated that, “I don’t think I’ve ever had a female refuse to talk to me. They always want to say something, even if it’s a denial.”²⁹ Police officers often ascribe negative attributes to girls in the juvenile justice system and view them as emotional, confrontational, manipulative, and verbally aggressive.³⁰ Trafficking survivors also report that officers refer to them using offensive language and racial slurs. Given the hostility girls in the justice system face, it is not surprising that they often have a greater likelihood to talk due to the presence of an authority figure and the power dynamics at play. These coercive factors make them less likely to invoke their *Miranda* rights as they try to cooperate with police officers.³¹

Given the tremendous amount of trauma that girls who are interacting with MPD have experienced, it is not surprising that police officers are ill-equipped to handle their significant mental health needs and would benefit from additional training. We support the Commission’s recommendation that police officers should be trained on how to refer youth to appropriate resources as well as adolescent brain development and best practices for police engagement with youth. In order for MPD to fully support policies that decriminalize status offenses and change *Miranda* protections and procedures, officers must understand the science and reasoning behind these reforms.

At Rights4Girls, we believe it is imperative to address the specific needs of girls and survivors in the community who often come in contact with the MPD in order to best support them. As the Council makes difficult decisions about which of the Commission’s recommendations should be legislated first, we encourage you to center the voices of youth in the District who have repeatedly said that police make them feel unsafe and want to be treated with the same respect and dignity as their white peers. Increased resources and supports for survivors of sexual exploitation and trafficking, eliminating police officers in schools, and requiring MPD to respond to youth in a developmentally appropriate manner are small but critical steps that the Council can take towards the goal of making the District safe for everyone.

We thank the Committee on the Judiciary and Public Safety for its commitment to supporting our city’s most vulnerable youth and we look forward to continuing to work with the Committee to serve D.C.’s girls. Should members of the Committee have any questions regarding this testimony, please contact Yasmin Vafa, Executive Director, Rights4Girls at yasmin@rights4girls.org.

105(2014), p. 1087.

²⁸ *Id.* at 1100.

²⁹ *Id.* at 1095.

³⁰ *Id.* at 1104.

³¹ *Id.* at 1100.



FOOD
CLOTHING
MEDICAL
services
LEGAL
services
SOCIAL
services
ADVOCACY
DIGNITY
RESPECT
SERVICE
JUSTICE

**Bread for the City
Written Testimony Submission**

**Hearing on Recommendations of the D.C. Police Reform Commission,
and Bills B24-0094, B24-0107, B24-0112, and B21-0213**

Joint Public Hearing of the Committee on the Judiciary & Public Safety
and the Committee on the Whole
May 20, 2021

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Bread for the City supports the Commission's general recommendations of both divesting from and decentering the MPD while simultaneously committing to a substantial investment in community infrastructure. We must both de-center the institution of policing *and* invest in community-centric programming to address public safety. When coupled together, these primary components of the Commission's recommendations begin to imagine a District where all residents can thrive.

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**The District must create and expand community-based services and
resources in manner that meets community needs**

Perhaps most relevant to our work as a direct services organization, Bread for the City ("BFC") can attest to the lack of a sufficient social safety net within the District. We are a private non-profit organization that works on behalf of and alongside D.C. residents living on low-incomes, predominately people of color. For the past 47 years, we've provided direct services by offering food, medical, legal, and social services to roughly 32,000 District residents. Rooted in our holistic, community-based view of public safety, we also serve our clients by helping them create an advocacy platform that fosters their ability to use their voices to demand a community that eliminates disparities in housing, healthcare, and the host of other socioeconomic disparities that people of color disproportionately experience.

Put simply, we at BFC know our communities are safest when their needs are met and they are allowed to thrive. Therefore, we highly endorse the Commission's recommendation that we build a broader set of public safety programs. As the Commission aptly states, a strong public safety net necessitates "culturally competent and easily accessible mental healthcare; treatment for

people struggling with substance use disorders; stable and affordable housing; and new models of community support and restorative justice.”¹ By making significant contributions to our social service infrastructures – ones that are intentionally trauma-informed, anti-racist, and community-competent – we can meet the needs of the community with care instead of criminalization.

“Smarter and more effective policing”² is *not* a goal that we are willing to pursue

We were glad to see that the Commission was able to provide a set of many community-centric aspirations despite the dissenting opinions, like those of Commissioner Bennett. Beginning on pg. 190 of the “DC Police Reform Commission Report,” Mr. Bennett states that he disagrees with several of the Commission’s recommendations including the decrease to MPD’s headcount and budget, capping unbudgeted police overtime pay, repealing the statutorily mandated minimum number of MPD personnel, and eliminating qualified immunity for police officers in civil litigation.³

BFC will not support any process for reforming the MPD that fails to *significantly* decrease MPD’s headcount and budget. As we attested to last June, MPD has continued the legacy of traumatizing Black and brown people, administering racial segregation, upholding white supremacy, and enforcing the cruel economic order that deprives poor and working-class people of the livelihoods they deserve. The time for funneling more and more of our money into the hands of the MPD – whether it be for recruiting and hiring more police, training police, or providing police with equipment like body cameras – is over. The police have demonstrated over and over that they are neither effective at implementing public safety for all nor are they willing to be held accountable to the public they allegedly protects. In light of this legacy, it is time to put matters of public safety into the public’s hands.

Both BFC and the public at large have made it clear that we want to see less time and resources spent tending to the harm, trauma, and loss caused by the police. We want to spend more time and resources implementing programs that support Black, brown, and poor residents of D.C. in ways that will allow them to heal and flourish in their community. Many of the recommendations by the Commission support these dual goals, specifically by drastically cutting the budget of the MPD and intentionally reallocating those funds to community-based programming.

¹ District of Columbia Police Reform Commission, *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission* at 52 (April 1, 2021), available at <https://dccouncil.us/police-reform-commission-full-report/> [hereinafter “DC Police Reform Commission Report”].

² *Id.*, at 190.

³ *Id.*, at 190-192.

D.C. Council Committee on Judiciary and Public Safety- Police Reform Commission Report
Recommendations Hearing-May 20, 2021

Testimony of Brittany K. Ruffin, Affordable Housing Advocacy Attorney, The Washington Legal Clinic for the Homeless

Good afternoon, Councilmembers. I am Brittany K. Ruffin, Affordable Housing Advocacy Attorney at the Washington Legal Clinic for the Homeless. Since 1987, the WLCH has envisioned and worked towards a just and inclusive community for all residents of the District of Columbia—where housing is a human right and where every individual and family has equal access to the resources they need to thrive. Unfortunately, our vision is still that—a vision. Currently, there is no right to housing; and it is hard for the vast majority of our vulnerable residents to focus on thriving when basic survival has become such a challenge.

We commend the thoughtfulness and intention of the *DC Police Reform Commission Report* to address many community issues and concerns by focusing on ways to decenter policing while improving public safety. We applaud the inclusion of the content in “Section Two: Strengthening the Safety Net and Decriminalizing Poverty” and the contemplation of what *actually* makes people safe. Too often, there is an absence of consideration for fundamental human needs in discussions around public health and safety. Access to food, water, shelter, and other fundamental physiological human needs should be the primary step in addressing community safety. Unfortunately, too many DC residents, largely Black and brown, are forced to navigate their survival with a lack of those basic resources. The fact that those same marginalized communities are also the most surveilled and policed is no coincidence. DC must broaden its definition of safety and begin to address its failure to meet the underlying needs of its residents. Housing is safety. Health is safety. Food is safety. Without universal access to those things as a right, not a luxury, there is no public safety. Specifically, this testimony will emphasize our unwavering support for recommendations that: prioritize and increase funding to address DC’s affordable housing and homelessness crises, minimize displacement by placing guardrails on DC’s development plans, and decriminalize and legalize conduct of survival relating to poverty.

The District of Columbia continues to have an affordable housing crisis that threatens thousands of its residents. In particular, there is a dearth of deeply affordable housing in DC—the category that is

needed the most. Despite this fact, deeply affordable housing for those at 0-30% AMI continues to be the most underproduced in DC. The pandemic and its resulting state of economic instability for so many has only exacerbated the need for more deeply affordable housing creation.

DHCD is the agency that controls and administers the Housing Production Trust Fund. The Housing Production Trust Fund is *the* fundamental source for creating and preserving affordable housing in D.C. Despite a statutory requirement that 50% of the HPTF be allocated to build and preserve housing that is affordable to households at up to 30% AMI, DHCD fails to meet the allocation. When a significant pot of money meant for housing creation for the lowest-income residents is constantly allowed to be unused and disregarded *despite* statutory prioritization and without consequence, DC govt has to reevaluate its purported commitment to deeply affordable housing and its residents who struggle the most to live here. DC Council must assert greater oversight over HPTF project selection and funding, ensuring that the HPTF money is being allocated as intended.

The pandemic has emphasized existing community needs and racial disparities. In DC, the majority of COVID-19 deaths thus far have been of Black residents. Eighty-eight percent (88%) of those experiencing homelessness in DC are Black—a pre-pandemic statistic. More than 20,000 Black residents were displaced from DC between 2000 and 2013. Undoubtedly, many more have been displaced in this last decade as housing affordability in the city continues to decrease. Currently, Black residents account for nine out of ten of the extremely low-income households (0-30% AMI) in D.C. Those same households are severely rent-burdened, spending over half of their income on housing. The median Black household in DC has an income at the 40%AMI. The data is clear that not prioritizing deeply affordable permanent housing creation and failing to place guardrails on DC's luxury and business development will mean further displacement and trauma for Black DC residents.

As mentioned in the Police Reform Commission Report, differing definitions of homelessness make it hard to know the true population of those experiencing homelessness in DC. Hundreds of individuals and families are undercounted by not including those who are not on the street or receiving services through DC shelters. One can simply look at the discrepancy between the Point-In-Time count and the number of students that DCPS reports as experiencing homelessness. If DC refuses to acknowledge the true need of housing and services for those experiencing homelessness, the need can never be met. While it is clear that DC is not meeting the actual needs of all who are experiencing homelessness. DC, however, does not lack adequate resources to meet the housing needs. DC lacks political will and a real commitment to address such inequities.

DC must pair an acknowledgment of the failure to meet resident needs with necessary legislative changes that allow people to attempt to meet their own survival needs without punishment. Temporary abode, public space, and panhandling offenses should be repealed. People who are lacking basic necessities and striving to feed themselves and families should not face a risk of incarceration for doing so. While decriminalization is a better option than categorizing survival behaviors as crimes, legalization should be the preferred option. DC should not be creating punishments and illegalizing conduct related to basic survival and attainment of human needs. There is no legitimate purpose for levying a fine against an already under-resourced individual. A fine only serves as confirmation of a continued lack of concern and acknowledgment for the reality of the struggles that so many DC residents face. People with no permanent housing that are sleeping outside and/or living in encampments should not be penalized for desiring a place to rest and locating one. Instead of simply

contemplating which crimes of poverty should be decriminalized, the goal of the Council should be to eliminate unnecessary contact with law enforcement altogether through a rejection of the reliance on enforcement as an answer to the city's inability to meet the most fundamental needs of its residents. Minimizing harm and trauma while investing resources to meet the permanent housing needs of DC's most vulnerable residents should be the ultimate goal.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Public Roundtable on

The Recommendations of the Police Reform Commission
B24-94, the “Bias in Threat Assessments Evaluation
Amendment Act of 2021”
B24-107, the “Metropolitan Police Department Requirement of Superior
Officer Present At Unoccupied Vehicle Search –
No Jumpout Searches Act of 2021”
B24-112, the “White Supremacy in Policing Prevention Act of 2021”
B24-213, the “Law Enforcement Vehicular Pursuit Reform Act of 2021”

Testimony of
Chris Geldart
Acting Deputy Mayor for Public Safety and Justice

Before the
Committee of the Whole
Chairperson Phil Mendelson
and
Committee on the Judiciary and Public Safety
Charles Allen, Chairperson
Council of the District of Columbia

May 20, 2021
9:30 AM

Good morning, Chairman Mendelson, Chairperson Allen, members and staff of the Committees, and everyone watching the hearing virtually. I am Chris Geldart, Acting Deputy Mayor for Public Safety and Justice. I appreciate the opportunity to testify before the Committees today regarding the recommendations of the Police Reform Commission and the four proposed bills.

In July 2020, the Council enacted legislation that established a 20-person Police Reform Commission. Its mission was to examine and provide recommendations on the following issues related to policing: the role of sworn and special police officers in District schools; alternatives to police responses to incidents, such as community-based, behavioral health, or social services co-responders; police discipline; the integration of conflict resolution strategies and restorative justice practices into policing; and the provisions of the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020.

In April 2021, the Commission issued a report with almost 300 recommendations on a wide variety of issues, including substantial operating changes related to District agencies, the Council, and the judicial system. Generally speaking, the far-reaching recommendations can be broken out into three categories:

1. ***Recommendations the Administration generally supports and is already moving towards implementing.*** For example, as Mayor Muriel Bowser announced on May 17, the District is launching a pilot program with the Department of Behavioral Health, Metropolitan Police Department, and the Office of Unified Communications to shift 911 calls for emergency mental health services from an automatic police dispatch to a dispatch protocol that includes a mental health crisis response team.
2. ***Recommendations that require substantially more community or stakeholder engagement.*** The Commission made a wide variety of recommendations on schools, ranging from investments in plants to Safe Passage programs. However, all of this was done without meaningful feedback from school principals, educators, or staff. My office has worked with the Deputy Mayor for Education to conduct a survey of DCPS principals and gauge their thoughts on the Commission's proposal to eliminate MPD's School Safety Division, a unit that does important work to support and protect District students and schools. I should note that the Commission took the drastic position that this should be done during the current fiscal year which, for the viewers at home, means by September 30, 2021. To be clear, this outreach to school principals, educators, Parent-Teacher Associations, and parents is the bare minimum of work that should have been done before making such an extreme recommendation.
3. ***Recommendations that are unreasonable and unsupportable.*** The Commission recommended the city reduce its police force by at least the rate of attrition for the next five years. MPD's police force is currently around 3,600 officers – that is the lowest level in more than 20 years. If the Council adopted the Commission's police reduction proposal, the District would have less than 2,000 police officers by 2026. While this proposal is supported by those who want to abolish the police department, it is extremist, irresponsible, and lacking, as a whole, community support.



We believe it is imperative that Councilmembers – and the public – carefully review all the Commission’s recommendations and understand their implications. It is also critical that to ensure the legitimacy of policy decisions that will have major impacts on our residents’ safety, these recommendations are fully communicated to the public. While a single hearing on the issue is a good start, it requires much more intensive outreach to the communities most impacted by the decisions. As part of that commitment to transparency and engagement, we will be publicly releasing the results of our DCPS principals’ survey once they’re compiled.

* * *

I will briefly address the four bills before the Committees today.

Bias in Threat Assessments Evaluation Amendment Act

This bill requires the Office of the Attorney General (OAG) to conduct a study to determine if MPD has engaged in biased policing in threat assessments of First Amendment assemblies between 2017 and January 2021. The bill includes a detailed analysis of MPD’s response to each assembly; a determination of biased policing based on race, color, religion, sex, national origin, or gender; and recommendations based on those findings.

Although I defer to Attorney General Racine on the operational impacts on his office to implement this legislation, as an initial matter, it will be an exhaustive task. Over the past four years, MPD has facilitated more than 4,200 First Amendment assemblies. The vast majority of these demonstrations were facilitated safely and peacefully for all those involved. They represent the normal situation for any First Amendment gathering: People of all backgrounds and opinions come to the District, make their voices heard, and go home safely.

We understand the terrible events of January 6, 2021 invite many questions. Indeed, Chief Robert Contee has already testified before Congress three times this year to address questions related to the insurrection at the Capitol. And although there is discussion about the U.S. Capitol Police not having been prepared for the event, it is well acknowledged that the District and MPD assumed a posture of maximum preparedness for the week of January 3rd. It is critical to understand that under federal law, MPD is prohibited from entering the Capitol complex or its grounds to patrol, make arrests, or serve warrants without the consent or request of the Capitol Police Board. (2 U.S. Code § 1961). Therefore defending the Capitol was not part of our planning. On the morning of January 6, MPD was prepared to support its federal partners on DC streets during a First Amendment assembly that was held primarily on federal land, and to safeguard the city if the participants became violent after dark, while continuing to patrol and respond to calls for service throughout city neighborhoods.

In preparation for the anticipated demonstrations and the possibility of violence on city streets, MPD was fully deployed on 12-hour shifts the week of January 3rd, with days-off and leave canceled. Our federal partners each had their primary areas of responsibility: the U.S. Secret Service was focused on the security of the former President and the White House area, U.S. Park Police was focused on the Ellipse and the National Mall, and the U.S. Capitol Police had responsibility for the Capitol, including both the building and grounds.



At Mayor Bowser's request, and in advance of the scheduled demonstrations, mutual aid was requested from several area police departments, including Arlington County Police Department, Prince George's County Police Department, and Montgomery County Police Department for January 5 and 6. Additionally, MPD had discussions with the Maryland State Police and Virginia State Police on their ability to provide assistance on January 5 and 6, if needed. More than 300 members of the DC National Guard were deployed on District streets providing traffic control and other services to allow MPD to support the First Amendment assembly and continue to provide services to DC neighborhoods.

I want to reiterate that while we do not oppose an independent review of MPD practices that may lead to positive change, neither this past year nor prior history indicates disparate preparation for First Amendment assemblies. Although ill-informed media coverage has attempted to contrast responses to the January 6th Insurrection and the few riots declared last summer, this coverage paints all the events and the many responding law enforcement agencies with too broad a brush. MPD had far more resources available in response to the January 6 Insurrection than to the events of last summer. I believe this bill would unnecessarily divert scarce public safety resources away from the critical work that MPD and the OAG are doing every day to keep the city safe.

MPD Requirement of Superior Officer Present at Unoccupied Vehicle Search

This bill requires MPD adhere to certain requirements when conducting searches of unoccupied vehicles. In order to search an unoccupied vehicle, a superior officer must be present, all officers present have their body-worn cameras (BWC) on, the reason for the search must be recorded on the BWC, a report must be prepared about the results of the search, and the owner of the vehicle must be notified of the reason for the search, and would have the right to sue the officer in their individual capacity for any violation of this law.

Chief Contee has spoken at length with Councilmember Trayon White, who proposed this legislation, and has heard his concerns and those of other community members. In response, he has been reviewing and revising MPD's strategies related to illegal guns and gun violence. Chief Contee has shifted resources to focus on an intelligence-based policing approach to identify, interdict, and interrupt violent offenders within the District. The goal is to build strong criminal cases on violent offenders to ensure those repeat offenders cannot continue to endanger our communities. Officers working on these issues have already begun receiving enhanced training.

To address the specifics of the bill, MPD policy already requires that all officers equipped with body-worn cameras activate their BWC when conducting a vehicle search. The unoccupied search, however, could apply in a variety of circumstances, for example, when MPD impounds a vehicle and hold it for a search warrant. It is unclear if the bill would apply in that setting. Certainly, once a judge issues approval for a search, the approval of a superior officer would be redundant. This requirement is also going to be increasingly challenging given reductions in police staffing. It would instead make sense to require pre-approval from a supervisor or watch commander, but not that they must be present at the search.



The proposal also requires *all officers* present during a search have their BWCs activated. However, some MPD officers who do not regularly engage the public, such as detectives, are not equipped with BWCs. Department directives do already stipulate that *all BWC-equipped officers* activate their BWCs for searches of person or property, including vehicle searches. Since more than 3,200 members have BWCs, it would seem sufficient to require that at least one member be equipped and all BWC-equipped officers activate it.

The bill also proposes that the vehicle owner have the right to sue individual officers not adhering to this law in their individual capacity. First, a piecemeal approach to officer liability – or the liability of any government worker – is not good policy or practice. Second, officers are not operating in their individual capacity, but rather as agents of the District of Columbia. As such, they are subject to internal investigation and progressive disciplinary action for violations of policy, and the Department will hold them accountable.

White Supremacy in Policing Prevention Act of 2021

This bill requires the Office of District of Columbia Auditor (ODCA) to conduct an assessment of ties between MPD and white supremacist or other hate groups. It also requires ODCA to recommend reforms to MPD policy, practice, and personnel to better detect and prevent ties to hate groups.

Chief Contee is at the forefront of working to address this issue head on. MPD has commissioned the Police Executive Research Forum, a respected independent organization, to conduct a yearlong organizational health assessment to review MPD's policies and practices related to diversity, inclusion, and equity in multiple areas, including race, gender, and sexual orientation, in functional domains such as recruiting and training, supervision, promotional processes, EEO processes, and internal investigations. External to the agency, the review will focus on the delivery of police services and ensuring unbiased policing efforts. The review will include a specific focus on extremism, hate speech, and white supremacy – assessing processes and practices to eliminate the impacts of each within the Department.

This bill requires ODCA to review things like the social media or gatherings of officers, while also respecting their First Amendment rights, which is challenging. Many others are looking at this issue and have not yet found a way to balance this mandate for current employees. One critical challenge is that while the bill defines hate groups and white supremacy, the US government does not have a list identifying domestic hate groups or white supremacist groups. It would be very helpful to hear the Auditor's thoughts on how its office would balance the First Amendment issues that are inherent in this legislation.

While we share a common goal of ensuring extremism has no cover in MPD, we believe it is premature and unnecessary to legislate this process at this time.

Law Enforcement Vehicular Pursuit Reform Act

This bill would prohibit law enforcement officers from engaging in vehicular pursuits of an individual operating a motor vehicle, unless the officer reasonably believes that:



- The fleeing suspect has committed or attempted to commit a crime of violence;
- The pursuit is necessary to prevent an imminent death or serious bodily injury; and
- The pursuit is not likely to put others in danger of death or serious bodily injury.

The bill also prohibits MPD from engaging in conduct like caravanning, paralleling, ramming, and discharging a firearm from a moving vehicle.

While the bill largely mirrors current MPD policy, I need to flag three elements in this bill that would hinder public safety goals.

First, the outright ban on discharging a firearm at or from a moving vehicle is too restrictive. MPD's policy prohibits officers from firing their guns either at or from a moving vehicle unless it is being used to conduct a vehicle ramming attack. This is a situation where a perpetrator deliberately rams, or attempts to ram, a vehicle at a crowd of people with the intent to inflict fatal injuries. We saw this situation happen on April 2, 2021, when U.S. Capitol Police Officer William Evans was killed after a man intentionally drove his vehicle into a security barricade. In New York City in October 2017, a man in a rented truck drove onto the Hudson River Park bicycle path, running over cyclists and runners, killing eight people and injuring 11 others. Additionally, on August 12, 2017, Heather Heyer was killed in Charlottesville, Virginia after a driver intentionally drove into a crowd of peaceful demonstrators. This exception to MPD's policy is unfortunately necessary in those instances when an officer is facing a terrorist using a vehicle to try to kill pedestrians and the officer may have no other tool at their disposal than their gun to stop the violent act. Similarly, tactics such as roadblocks and ramming may be necessary to stop a terrorist attack. Second, the bill's prohibition on caravanning, the practice of more than two law enforcement vehicles following each other "in relative single file," is important in some cases to prevent endangering opposing traffic flow. Finally, the prohibition on paralleling may need further clarification so as not implicate the practice of monitoring and responding to potential bailout situations where suspects have abandoned and run from a vehicle.

While these tactics are not used frequently, certain circumstances merit their use to protect the public. I ask the Council to not move forward with these prohibitions and give careful consideration of MPD's current policy, which is already very restrictive.

* * *

In closing, I appreciate this opportunity to discuss public safety in our city. I look forward to continuing to work with our communities and the Council on our shared goal of making the District safer for everyone.

I look forward to your questions.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
POLICE COMPLAINTS BOARD
OFFICE OF POLICE COMPLAINTS**



JOINT PUBLIC HEARING:

The Recommendations of the D.C. Police Reform Commission

**B24-0094, The “Bias in Threat Assessments Evaluation
Amendment Act of 2021”**

**B24-017, The “Metropolitan Police Department Requirement
of Superior Officer Present at Unoccupied Vehicle Search-No
Jump-out Searches Act of 2021”**

**B24-0112, The “White Supremacy in Policing Prevention Act of
2021”**

and

**B24-0213, The “Law Enforcement Vehicular Pursuit Reform
Act of 2021”**

TESTIMONY OF
MICHAEL G. TOBIN,
EXECUTIVE DIRECTOR
OFFICE OF POLICE COMPLAINTS

May 20, 2021

Good morning Chairman Allen and members of the Committee on the Judiciary and Public Safety. I am Michael G. Tobin, the executive director of the Office of Police Complaints (OPC). I appreciate the opportunity to provide testimony regarding police reform in the District of Columbia.

The mission of OPC is to improve community trust in the District's police departments through effective civilian oversight over the Metropolitan Police Department (MPD) and the District of Columbia Housing Authority Police Department (DCHAPD). OPC's mission of improving public trust has arrived at an important crossroad not envisioned by its current statutory authority.

Today my allotted time for speaking will be utilized to address the recommendations of the Police Reform Commission (PRC), and more specifically the provisions of the PRC report as they relate to the Police Complaints Board (PCB) and OPC.

The OPC and PCB were created to provide an effective and efficient review mechanism to oversee the "extraordinary powers" of the District's sworn police officers. At the time of their creation some twenty years ago it was considered a significant step forward in police oversight. The enabling statute created by the DC Council was the next step in the evolution of a long history

of oversight in the District that extends back to World War II and even the Civil War. On August 15, 1861. President Lincoln appointed 5 community members as Commissioners of Police for the Metropolitan Police Board of the District of Columbia. This was part of the same Congressional Act of August 6, 1861 that established MPD as the first regular federal police force for DC and created our first civilian oversight agency, the Metropolitan Police Board. By interpretation of these documents, it is reasonable to say that civilian oversight of MPD in the District began with the official establishment of MPD in 1861.

Since 1861 many iterations of oversight have come and gone in the District. Today we have an oversight agency that is primarily investigative in its function and limited in its jurisdiction, and a civilian board that has little authority to provide meaningful community input into police policy, procedure, discipline, and training. In fact, one of the “civilian” board members of the PCB tasked with providing community input is a sworn police member that is subordinate to and appointed by the police chief.

The PRC has made several recommendations to update the authority and jurisdiction of the PCB and OPC to reflect the current needs and desires of our community. It is time to give these recommendations serious consideration. It is time to move civilian oversight of MPD to the next iteration. In a sense, many of the recommendations are simply returning our system of police oversight to what it was intended by Congress in 1861. When President Lincoln appointed the first civilian board it was granted far greater responsibility and oversight than most boards in the country currently have. The first five Commissioners of Police appointed to the Metropolitan Police Board did not have any of the jurisdictional or authority limitations that currently restrict civilian oversight to a nominal existence.

Our current system of oversight is in dire need of improvement, and many of the PRC recommendations address these deficits. If the current process is not working properly, it would be beneficial to examine it more closely and determine what procedural, staffing, jurisdiction, and other modifications can be implemented to strengthen the existing system.

In reviewing the PRC report recommendations currently under consideration, there are multiple areas that will be beneficial to improving oversight. A partial compilation of the recommendations includes:

- The Council and Mayor should expand the authority of and rename the Police Complaints Board, which will continue to oversee the Office of Police Complaints, as the District of Columbia Police Commission.
- The Council and Mayor should expand the jurisdiction, authority, and resources of the Office of Police Complaints.
- The Council and Mayor should make permanent the Comprehensive Policing and Justice Reform Act Second Emergency Amendment Act of 2020's revision of the DC Code that "all matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable."
- The Council and Mayor should revise the Freedom of Information Act (FOIA) law and explicitly provide the public with access to officer's personnel records pertaining to misconduct allegations and complaints.

OPC will support this Committee in its effort to implement meaningful and lasting improvements to police oversight in our community. I thank the Committee for its time and we will be happy to answer any questions you may have.

THE
PUBLIC
DEFENDER
SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

TESTIMONY
OF THE PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA

Concerning

The Recommendations of the D.C. Police Reform Commission,
Bill 24-107, the Metropolitan Police Department Requirement of Superior Officer
Present at Unoccupied Vehicle Search – No Jumpout Searches Act of 2021
Bill 24-112, the White Supremacy in Policing Prevention Act of 2021, and
Bill 24-213, the Law Enforcement Vehicular Pursuit Reform Act of 2021

Presented by

Katerina Semyonova

before

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COMMITTEE OF THE WHOLE
COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Charles Allen

May 20, 2021

Avis E. Buchanan, Director
Public Defender Service
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(202) 628-1200

Thank you for the invitation to testify at this public hearing. I am Katerina Semyonova, Special Council to the Director on Policy and Legislation at the Public Defender Service for the District of Columbia.

PDS commends and deeply appreciates the work of the Police Reform Commission (PRC). The PRC produced thorough and transformative recommendations for reform based on evidence, data, history, and lived experiences. The PRC conducted its work with transparency and broad engagement with District residents and organizations. The recommendations of the PRC span nearly the entire scope of policing in the District. PDS has supported many of the recommendations made in the PRC's report in prior testimony, for instance in advocating for non-police responses to community needs through a CAHOOTS style program¹ and in PDS's testimony on the Comprehensive Policing and Justice Amendment Act of 2020.² PDS's testimony today will focus on the PRC's recommendations surrounding strictly limiting police presence at schools, citation in lieu of arrest, consent searches, and accountability for MPD through the Office of Police Complaints and the release of body worn camera footage. PDS will also offer testimony on the White Supremacy in Policing Prevention Act of 2021.

PDS supports the recommendations of the PRC concerning police in schools including the need to radically transform a system where the PRC found that "youth of color in particular do not feel safe in educational spaces where they are interacting with a system of surveillance, control, and punishment that generally views Black and Brown

¹ HN23-0131, Committee on the Judiciary and Public Safety Public Oversight Roundtable on Exploring Non-Law Enforcement Alternatives to Meeting Community Needs, December 17, 2020.

² PDS testimony on the Comprehensive Policing and Justice Amendment Act of 2020, October 15, 2020. Available at: https://lms.dccouncil.us/downloads/LIMS/45506/Hearing_Record/B23-0882-Hearing_Record1.pdf

people as a threat.”³ As noted by the PRC, “schools populated mainly by students of color have more police officers, as well as more metal detectors, K-9 units, and military-grade weapons” and the large “number of officers has led to an increase in school-based arrests, in which Black students are arrested at more than twice the rate of White students.”⁴ Clients that PDS represents at special education meetings and disciplinary hearings are traumatized by being arrested and escorted out of buildings in front of their teachers and peers. School should be a safe place for all students, but the prevalence of officers and the fear of arrest means that students are afraid to attend school if they are in abscondence from a shelter house or out of compliance with court ordered conditions of release. For instance, if a 15-year-old absconds from a shelter house in order to return home, they will stop going to school for fear of being arrested. This fear then feeds a cycle where the student falls further behind academically, disconnects from peers and trusted adults, and has more unstructured out of school time which increases the likelihood that the young person could be arrested for a new offense. Particularly since the District knows that chronic school absences correlate with juvenile and adult system involvement for youth, the Council should take all possible steps to support, rather than disincentivize, school attendance. It should adopt the PRC’s recommendation to “prohibit MPD from serving warrants, detaining, or arresting youth on campus or at school-related events for non-school-based offenses or custody orders.”⁵ Through funding for behavioral health programs, restorative justice, and other initiatives, the

³ Report of the Police Reform Commission at 67.

⁴ Report of the Police Reform Commission at 68.

⁵ Even where the custody order is premised on a prior school-based event, arrest at school should be prohibited.

Council should also seek to minimize school-based circumstances that could lead to arrest and require schools to embrace more developmentally appropriate approaches for student behaviors that present challenges.

With respect to citation in lieu of arrest, the PRC recommended that the Council “replace the District’s presumption-of-arrest standard with a presumption-of-citation standard by amending DC Code 16-1031, 23-581 and 23-584 to require either verbal warnings or citations in lieu of arrest (“field arrests” in the DC Code) in all circumstances enumerated in MPD’s Executive Order 20-011, which addresses changes in MPD’s citation release order due to the COVID19 pandemic.”⁶ The PRC explained that: “MPD officers should refrain from making an arrest unless doing so (1) reasonably advances the goal of public safety or addresses significant and chronic community disorder; and (2) the situation cannot be resolved in a less intrusive manner.” The PRC also recommended that MPD establish and enforce a “most effective, least intrusive response” that requires a problem-solving approach to illegal activity.⁷

Arrests have adverse, and often severe, consequences for the arrested person and harm community-police relationships. Custodial arrests can terrify individuals, family members, and bystanders and lead to the use of force by officers and perpetuate an escalating pattern of trauma and fear on the part of residents and use of force on the part of police. Custodial arrests and the accompanying fingerprinting that happens during booking also endanger immigrant members of the community who may be targeted for immigration enforcement as a result of the use of national fingerprint databases during

⁶ Report of the Police Reform Commission page 116.

⁷ Report of the Police Reform Commission at 117.

booking. When fingerprints are taken by MPD, they are automatically sent to numerous federal databases, such as the FBI database and various immigration related databases, leading to a de facto notification to immigration authorities. Given that about 30 percent of arrests result in no papering decisions, lives are shattered by accusations that do not even rise to the level of warranting prosecution in the eyes of prosecutors. To protect immigrant residents, all fingerprinting should be delayed until after any conviction. Zero-tolerance arrest policies also fail from the public safety perspective: they increase fear and do nothing to drive down the level of serious crime.⁸

Under current law, MPD has narrow authority to perform “field arrests” which while called “arrests” do not involve taking an individual into custody but rather result in a ticket to appear at the MPD district between 15 and 90 days later to complete the booking process and either a forfeiture of collateral or a subsequent notice to appear in court. Field arrest, or what the PRC terms, citation in lieu of arrest, is the safest way to minimize harmful and traumatizing interactions between residents and police if a court process must in fact be started. DC Code § 23-584 provides the authority for MPD to perform “field arrests” for OAG offenses that are designated as eligible for field arrest by the chief of police.⁹ The offenses deemed eligible for field arrest include digging for bait in Rock Creek Park, and various harbor regulations. While some more common offenses appear on the list such as disorderly conduct, the statute is outdated and fails to create a broad public policy rationale for dealing with interactions between police and residents in a manner other than arrest.

⁸ Report of the Police Reform Commission at 118.

⁹ MPD, PD Form 61-D, Violation Citation. Available at: https://go.mpdconline.com/GO/SOP_05_02.pdf

Citation release is another existing alternative to arrest and courthouse release, but unlike field arrests, it requires custodial arrest and the completion of the booking process at MPD prior to release with a notice to appear in court at a later date. Currently, citation and release has been somewhat expanded by the invocation of section (c) of DC Code § 23-584 which allows prosecuting authorities to expand the use of citation and release if the Chief Judge declares the existence of a condition that significantly impairs the functioning of Superior Court.¹⁰ Under the pandemic-related changes, some additional offenses are eligible for citation and release and certain bars to citation and arrest have been lifted. But the changes currently in place do not go far enough – they do not address field arrest, and they leave too much discretion in the hands of prosecutors and police.

PDS agrees with the PRC recommendation that reform should start with a presumption of citation. The Council should amend the DC Code to require citation in lieu of arrest for a broad array of charges. The Council should also expand the offenses for which MPD may perform a field arrest or a citation release and narrow the criteria that may be used by officers to determine that someone is ineligible for those options.

PDS also supports the PRC’s recommendations regarding ending all consent searches. As noted by the Police Reform Commission, “residents, especially in over-policed communities, rarely feel free and safe to make a voluntary choice.” MPD’s requests for so-called consent searches are inherently abusive, degrading, and coercive and are overwhelmingly targeted at Black residents. PDS urges Councilmembers to review video footage of Salehe Bembury, a Black man who was stopped by officers from the Los Angeles Police Department in daylight, on a busy street in Beverly Hills for

¹⁰ Executive Order, 20-011, Coronavirus 2019 Modification to Citation Release Criteria, March 17, 2020. Available at: https://go.mpdconline.com/GO/EO_20_011.pdf

jaywalking. Mr. Bembury is an executive for Versace clothing company and when he was approached by two police officers for jaywalking he told them: “I am super nervous.”¹¹ When an officer asked Mr. Bembury whether he could pat him down – run his hands all over his body, put his hands in Mr. Bembury’s pockets, Mr. Bembury said: **“you can do whatever you need to do, I’m just nervous.”** This is not consent. This is terror. And if the terror is there for a Black man who is a clothing company executive stopped in a busy public area in daylight, imagine that terror for someone who is young, or who has a prior record of arrest, or who is unemployed, or who is stopped at night, or in a deserted area. Adding a warning to that situation does nothing to allay a Black resident’s fears of being shot and killed by the police. People cannot make an informed and voluntary choice whether to waive or assert their rights when they are just trying to survive the encounter.

The availability of consent searches provides an incentive for police to make discriminatory stops. The ACLU-DC’s analysis of NEAR Act data for 2020 shows that MPD stops Black residents at vastly higher rates than their representation in the population and more frequently than they stop white residents. Black residents made up 74.6 percent of all *reported* MPD stops, despite comprising 46% of the District’s population. Black people comprised more than 90% of the searches that resulted in no ticket, warning, or arrest.¹² In contrast only, white people accounted for only 5.5% of

¹¹ Salehe Bembury was stopped by the Los Angeles Police Department on October 1, 2020. LAPD released the officer’s body worn camera footage. It is available at: <https://ktla.com/news/local-news/versace-shoe-designer-says-he-was-racially-profiled-in-beverly-hills-video-shows-him-frisked-searched-police-say-its-for-jaywalking/>

¹² Racial Disparities in Stops by the Metropolitan Police Department: 2020 Data Update, ACLU Analytics & ACLU of the District of Columbia. Available at: <https://www.acludc.org/en/racial-disparities-stops-metropolitan-police-department-2020-data-update>

searches that ended without an arrest, ticket, or warning.¹³ The data shows that MPD continues to use stops and searches – likely consent searches – to subject Black residents to aggressive and unconstitutional policing.

Other jurisdictions have banned consent searches. In 2002, the New Jersey Supreme Court banned police from seeking consent to search lawfully stopped drivers or vehicles, for example drivers stopped for speeding, unless law enforcement had reasonable articulable suspicion of criminal wrong doing.¹⁴ The Minnesota Supreme Court held that under the state constitution, police could not extend a valid traffic stop to request consent to search when the request was not supported by independent reasonable articulable suspicion.¹⁵ Rhode Island legislated the same reform.¹⁶ The Council should follow these precedents and the recommendation of the PRC to ban all consent searches.

PDS also wants to stress the importance of transparency and accountability in police reform. The PRC recommendations include changes to access to body worn camera footage and to the structure, scope, and function of the Office of Police Complaints. Expanding defense counsels' and the public's access to disciplinary information, body worn camera footage, legal settlements, and other information is a critical part of police reform. Pending complaints and sustained findings that include officers' names and narratives of incidents should be readily accessible on OPC's

¹³ *Id.*

¹⁴ *State v. Carty*, 170 N.J. 632, 790 A.2d 903 (N.J. 2002).

¹⁵ *Minnesota v. Mustafaa Naji Fort*, 660 N.W.2d 415 (Minn. 2003).

¹⁶ Rhode Island Statute § 31-21.2-5(b) "No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle, that is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity."

website.¹⁷ Body worn camera footage should also be broadly available, at a minimum, in all instances where the civilian subject of the footage consents to its release. Defense access to this information creates a fairer trial and court process by allowing judges and jurors to use this information in making credibility determinations on issues of guilt or pretrial detention..

As recommended by the PRC, the Council should amend the Office of Police Complaint's authorizing statute to allow anonymous complaints. There is no legitimate reason for limiting OPC investigations to those instances where a complainant is available to pursue the complaint, has a contact address or phone number, or where a complainant feels comfortable interacting with government agencies and is free of concerns about police retaliation. The unnecessary barriers of complainant submission and complainant participation in addressing police misconduct serve only to shield police from accountability. Witnesses or those who possess video should be able to anonymously submit it to OPC and OPC investigations should proceed accordingly. Given the widespread availability of video evidence, any pretense that OPC *needs* a witness to proceed should be removed from the statute. OPC should also be charged to seek patterns of misconduct, by performing random checks of individual officers' body worn camera footage and by examining the conduct of units such as those that use jump out tactics despite official claims to the contrary. OPC must have easy, searchable access to all body worn camera footage, the ability to show that footage to individuals as part of

¹⁷ Other jurisdictions including New York have increased the accessibility of police complaint and investigation information. See Ashley Southall, 323,911 Accusations of N.Y.P.D. Misconduct Are Released Online, New York Times, August 20, 2020. Available at: <https://www.nytimes.com/2020/08/20/nyregion/nypd-ccrb-records-published.html>.

investigations, and sufficient staff in order to perform its oversight functions. Nor should OPC investigations be limited to what is alleged by a complainant or to narrow legalistic definitions of abuse – OPC should investigate abusive conduct, bias, use of force, and deviations from the MPD sworn law enforcement code of ethics, which should also be updated.¹⁸ At the conclusion of its investigations, OPC should be authorized to impose discipline.

PDS also strongly supports Bill 24-0112, the White Supremacy in Policing Prevention Act of 2021, and makes several suggestions to strengthen the bill. The focus of the auditor’s investigation of white supremacy within MPD should not be limited to examining whether MPD officers have “ties to white supremacist or other hate groups.” The audit should also look at whether individual officers espouse “white supremacist views or views that indicate a disregard for the constitutional rights or humanity of individuals or the community that they elect to serve.” As currently drafted, the focus on affiliation with white supremacist and other hate groups will leave out examination of officers who hold and espouse hateful and racist views but who cannot be proven to be affiliated with local or national hate groups. Racist and white supremacist attitudes by police are harmful and dangerous to communities and individuals regardless of whether the DC Auditor can prove an officer’s group affiliation.¹⁹ Expanding the mandate to also

¹⁸ MPD General Order 201.36, Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics. The Code of Ethics provides, for example, that officers will have “no compromise for crime” and engage in “relentless prosecution of criminals” in contradiction of, or lacking nuance surrounding the aims of diverting individuals from the criminal legal system instead of relentlessly pursuing prosecution. The Code of Ethics also fails to meaningfully address bias, prejudice, and hate and officer responsibilities to report biased and abusive policing by fellow officers.

¹⁹ See Rachel Kurzius, D.C. Police Officers Fist Bumped A Proud Boy After Clashes In Front Of White House, DCist, July 5, 2019. Available at: <https://dcist.com/story/19/07/05/d-c-police-officer-fist-bumps-a-proud-boy-after-clashes-in-front-of-white-house/>. It is unclear whether fist bumping a member of the Proud Boys would sufficiently show a tie to a white supremacist group for the purposes of this bill, but it would at

address officer disregard for the constitutional rights of the individuals and communities they serve will also ensure that officers who, for example, glorify the violation of constitutional rights by wearing t-shirts that announce “let me see that waistband, jo” are identified.²⁰ It would also allow for the investigation of online behavior, like that uncovered in the Customs and Border Patrol where a Facebook group with more than 9,000 participants joked about the deaths of individuals crossing the border.²¹ Finally, PDS urges the Council to make the final report and any interim findings of the DC Auditor available to the public and to identify by name any officers found to have affiliations with white supremacist or hate groups, or those who hold white supremacist views and support the violation of constitutional rights. Defense counsel should be able to use this information in trials and other proceedings where police, often as the only witnesses, profess that actions or statements were made by the accused.

PDS appreciates the work of the Council and of the Police Reform Commission. The report of the Police Reform Commission presents in many respects a roadmap for improving the lives of all District residents especially those most harmed by centuries of racist and abusive policing. PDS welcomes your questions and offers support for fashioning the legislation.

a minimum show an affinity for the group’s views and should be investigated and reported. Broader language in the bill would ensure the inclusion and investigation of this conduct.

²⁰ Monique Judge, DC Cop Under Investigation for Wearing Shirt With KKK Symbol While on Duty, The Root, July 28, 2017. Available at: <https://www.theroot.com/d-c-cop-under-investigation-for-wearing-a-shirt-with-a-1797354445>

²¹ A.C. Thompson, Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes, Pro Publica, July 1, 2019. Available at: <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>. Zolan Kanno-Youngs, 62 Border Agents Belonged to Offensive Facebook Group, Investigation Finds, New York Times, July 15, 2019. Available at: <https://www.nytimes.com/2019/07/15/us/politics/border-patrol-facebook-group.html>



Written Testimony of

The Hon. Kathy Patterson

D.C. Auditor

prepared for the

Council of the District of Columbia
Committee on the Judiciary and Public Safety
and the
Committee of the Whole

Public Hearing on
The Recommendations of the Police Reform Commission

May 20, 2021

9:30 a.m.

Virtual Platform
The John A. Wilson Building
1350 Pennsylvania Avenue N.W.
Washington, DC 20004

I am pleased to offer testimony for the joint hearing of the Committee on the Judiciary and Public Safety and the Committee of the Whole on the recommendations contained in the report of the D.C. Police Reform Commission, ***Decentering Police to Improve Public Safety***, published April 1, 2021.

On March 23, 2021, the Office of the D.C. Auditor released a report prepared for us by The Bromwich Group LLC and Steptoe & Johnson LLP, [The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019](#). The report details the officer-involved fatalities of four young Black men: Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter. The review was designed to evaluate the conduct of the Metropolitan Police Department (MPD) officers involved in the incidents and the MPD internal affairs investigations that followed to determine if they followed existing law, MPD policy, and best policing practices, and to assess the oversight by the Use of Force Review Board (UFRB) that reviews serious uses of force.

The report built on a review of the Department’s policies and practices on use of force prepared by The Bromwich Group for ODCA in 2016. That review found that MPD and its overall policies on use of force “continues to be consistent with best practices in policing” and with the provisions of the earlier Memorandum of Agreement with the U.S. Department of Justice. We also identified deficiencies in use of force investigations that needed correction.

The four case studies published in March documented serious lapses in MPD’s investigation of the 2018 and 2019 uses of deadly force. We note that “weaknesses identified in our 2016 report have not been remedied and, indeed, have grown substantially worse” while MPD has appeared “to resist or be unconcerned with remedying them.” We found that MPD failed to comprehensively review the events leading up to the four fatalities and to fully explore the policy, tactical, and training issues they raised.

We recommended:

- Comprehensive investigation and analysis of use of force incidents including actions by all officers leading up to the use of force and any and all opportunities for de-escalation.
- Enhanced training for investigators who handle serious use of force cases.
- Requiring the UFRB to provide specific recommendations on training, policy, and best practices.
- Public release of both the Internal Affairs Division final report and the UFRB’s resulting conclusions on use of force investigations.

Two of these major recommendations are similar to recommendations of the Police Reform Commission and the remainder of this testimony will provide additional details on those issues: the importance of de-escalation and the need for transparency generally in police investigations. Underlying each of these is the overarching finding of our 2018-19 case study report and an upcoming 2020 report: the excessively narrow focus of MPD use of force investigations.

De-escalation

The Commission's Recommendation 21 is as follows: "To fulfill its obligation under DC Code 5-107.02(b)(3) and (4), which require training on use of force, MPD should reinforce the importance of critical decision-making, avoiding escalation, and using force only if necessary, reasonable and proportional." The commission specifically recommended that MPD use the Integrating Communications, Assessment and Tactics (ITAC) training developed by the Police Executive Research Forum.

In our case study report issued in March, Recommendation 10 focused on the importance of de-escalation noting that "IAD investigators should explore the possibilities for de-escalation in every investigation and in every interview of an officer engaged in a serious use of force." The team of experts investigating the officer-involved fatalities on behalf of ODCA found that MPD officers were justified in their use of force in the three instances in which individuals were fatally shot because in each case there was an imminent threat to life and safety. The experts also included in each case that additional actions could have been taken that might have led to a different outcome. In the May 9, 2018, death of D'Quan Young the Bromwich/Steptoe team found that the off-duty officer, James Lorenzo Wilson III, failed to make any attempt to de-escalate the situation that unfolded.

The ODCA report notes that MPD officers "are also governed by the duty to de-escalate situations: to take all reasonable steps to avoid the use of any type of force, including deadly force." MPD's de-escalation policy, incorporated in 2016 as a central element in the overall use of force policy, states:

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques.

Further, the ODCA report notes, "the de-escalation requirement is the first principle listed under MPD's use of force regulations" reflecting "the primacy of de-escalation and its overarching applicability to situations in which the use of force may be necessary."

D'Quan Young encountered Officer Wilson when the officer was off duty and walking from his car to a get-together at a home on 15th Street NE. Young initiated a conversation, Wilson did not respond, and a confrontation ensued, captured not by body-worn cameras since the officer was off duty but by stationery cameras at an adjacent recreation center. Though Young initiated a conversation, the officer maintained contact by following Young from the street to the sidewalk. "Though Mr. Young initiated the encounter, Officer Wilson escalated it." And "at no point is there any evidence that Officer Wilson tried to walk away or otherwise show an intention to withdraw from engaging with Mr. Young," the report notes. "Further, in none of his subsequent statements to investigators did Officer Wilson state that he identified himself as a police officer in an effort to encourage Mr. Young to stand down."

As the two young men faced each other on the sidewalk Mr. Young pulled a gun from his waistband. As they backed away Mr. Young fired once, and, as he retreated Officer Wilson fired “numerous rounds” at Mr. Young as he continued to back away, and subsequently fired two additional shots from behind a car while Mr. Young was on the ground. While finding that Officer Wilson’s use of deadly force was justified, the expert reviewers found that the officer should have been held accountable for failing to attempt to de-escalate the situation. And they found that the Internal Affairs investigation “should have fully explored the possibilities for de-escalation, addressed the issue in its report” and provided background on the situation for consideration by the UFRB.

The Bromwich/Step toe report for ODCA: “We agree that the use of deadly force by Officer Wilson—in response to Mr. Young drawing, pointing, and shooting his pistol—was justified, but we disagree with the conclusion that Officer Wilson’s actions taken as a whole were consistent with MPD policy. We believe his failure to make any effort to de-escalate the situation violated MPD’s policy, which required de-escalation when feasible (as it as here.) The investigation should have explored the de-escalation issue and the UFRB should have addressed it. Neither of those things happened.”

Returning to the Police Reform Commission’s recommendation on de-escalation and Police Executive Research Forum (PERF) training that incorporates de-escalation tactics, the issue that presents itself is what actions MPD should take to ensure that what is currently embodied in written policy is actually practiced in the field? We have recommended that the Internal Affairs and UFRB review of use of deadly force encompass a thorough review of the full context when force is used, in order to identify whether and what discipline and additional training is warranted. Those investigations, though, are after the fact and before the fact adherence to policy is the better goal.

Transparency

In its Recommendation 9, the Police Reform Commission asked the Mayor and Council to “explicitly provide the public with access to officers’ personnel records pertaining to misconduct allegations and complaints.” The report quotes a WNYC News survey of the states on public access to police disciplinary records and found such records “public” in 12 states, “public in some situations” in 15, and “confidential” or “mostly confidential” in 23. The Commission notes, “It categorized police disciplinary records in DC as ‘confidential’ and ‘mostly unavailable.’ Since then more states including California and New York have made some or all disciplinary records available to the public. The District should become one of the growing number of jurisdictions where police disciplinary records are public.”

As the basis for the recommendation, the Commission quotes President Obama’s Task Force on 21st Century Policing, that “Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.”

In their recent report for ODCA, as noted, the Bromwich/Steptoe team reviewed the use of force investigations by MPD's Internal Affairs Division and the oversight provided by the Use of Force Review Board, focusing on the four officer-involved fatalities that took place in 2018 and 2019. We are concluding work, now, on the investigation of the first of two 2020 officer-involved fatalities and will produce reports on each of those cases. The report on 2018-19 cases recommended that the Department make public both the Internal Affairs Division's final investigative report on uses of force, and the Use of Force Review Board's conclusions after reviewing the IAD reports.

The ODCA report notes that the lack of public disclosure of the findings of use of force investigations constitutes an information gap and that "leads to a lack of public confidence in MPD's investigations, and can lead to public speculation and erroneous allegations of misconduct." The report published in March and the one forthcoming on the death of Deon Kay in 2020 are critical of the department's very limited review of the incidents. We call for far more comprehensive investigations and more and better specialized training for those conducting the use-of-force investigations. Our recommendation on public disclosure is also aimed at improved investigations:

Disclosure in some form of the Final Investigative report will create powerful internal incentives for those investigations to be competently and thoroughly conducted and rigorously reviewed because there would be some public accountability for the MPD entities and personnel responsible for those matters. The release of MPD's findings would enhance the credibility of its work, thus raising the level of the public's trust.

When asked to review and comment in writing on the recommendation in the March ODCA report on the four case studies, Police Chief Robert J. Contee III wrote in a March 15, 2021, letter: "MPD agrees with all of the report's recommendations and will begin working on implementation immediately. We are targeting implementation of all recommendations by the end of 2021."

Subsequently, however, during his confirmation hearing on March 25, 2021, Contee was asked again about releasing use of force reports to the public. He responded: "I think that that's something I'm open to ... I'm certainly open to it. I am. Because I think that again, this situation came out as a result of the auditor's report. I just need to talk to my team about the best way to do that. I think my goal is to work toward yes."

Given the specific recommendation on use of force investigative reports in the ODCA report and the overall emphasis on transparency with regard to MPD officers and discipline issues in the Police Reform Commission report, the issue of department transparency going forward is ripe for further discussion.

Following are suggested questions the Council Committees may wish to ask Chief Contee during the May 20, 2021 joint hearing based on the two policy areas reviewed here.

Suggested questions for Chief Contee

- The recently published case studies of MPD's use of deadly force in 2018 and 2019 by the D.C. Auditor found failures on the part of MPD officers to follow current policy that requires that members to "defuse use of force situations with de-escalation techniques." What steps will you take to ensure that all officers in all situations seek to defuse situations with use of de-escalation techniques? Will you, per the Police Reform Commission recommendation, engage with PERF and use the organization's ICAT training?
- In your March 15, 2021, letter to the D.C. Auditor on the report on 2018 and 2019 officer-involved fatalities, you said you agreed with all of the recommendations made in the report, including the recommendation to make Internal Affairs and Use of Force Review Board findings public. You appeared to walk back from that commitment in your confirmation hearing. Please clarify: will MPD make future use of force reports by Internal Affairs and the UFRB public?
- Also on the issue of transparency, the Police Reform Commission recommends providing the public with access to officers' personnel records pertaining to misconduct allegations and complaints, something that is occurring with greater frequency across the country, including in California and New York. Will you make discipline records public?

I hope this information on the recent work by ODCA is useful to the Committees. Please feel free to let me know if you have questions or if there is other related information we might be able to provide.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



May 20, 2021

Chairman Phil Mendelson
Councilmember Charles Allen
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Hearing on the Recommendations of the D.C. Police Reform Commission and Bills
Related to the Metropolitan Police Department

Dear Chairman Mendelson and Councilmember Allen:

Thank you for holding a hearing on the recommendations of the Police Reform Commission (Commission) and on the “Bias In Threat Assessments Evaluation Amendment Act of 2021,” the “Metropolitan Police Department Requirement of Superior Officer Present at Unoccupied Vehicle Search – No Jumpout Searches Act of 2021,” the “White Supremacy in Policing Prevention Act of 2021” and the “Law Enforcement Vehicular Pursuit Reform Act of 2021.” I write to provide my continued support for the Council’s efforts to ensure policing in the District is equitable, safe, and effective, and to support the Police Reform Commission’s call that we take a holistic approach to creating and protecting public safety in the District of Columbia.

The Police Reform Commission was established by the Council to examine policing practices in the District and provide evidence-based recommendations for reforming and revising those practices. It was comprised of 20 individuals, including a representative of my office. Although the Office of the Attorney General (OAG) did not vote on the individual recommendations, I am proud that OAG contributed to the important conversations that helped shape these recommendations.

The Commission’s report offers an important framework for thinking about public safety in the District—both what public safety means and how to achieve it. At base, the Commission has recommended that the District reduce the need for police involvement by investing in strategies that strengthen communities and address the root causes of crime, including by ensuring access to quality schools in which students and their families feel supported; providing pathways to safe and permanent housing; improving access to behavioral health and substance use issues; and expanding and supporting violence interruption programs. I have long believed that protecting public safety requires thinking creatively and broadly about how to address residents’ needs and have developed initiatives, such as OAG’s violence interruption, restorative justice, and truancy prevention programs, that help reduce the need for police intervention and criminal justice system involvement. I look forward to continuing to work with the Council, our law enforcement partners,

Chairman Phil Mendelson
Councilmember Charles Allen
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and other District agencies to operationalize the important concepts embodied in the Commission's report.

I also want to thank the Council for considering legislation that will help ensure that policing practices in the District are safe and equitable, for example by ensuring police only engage in vehicle pursuits when they are necessary for the protection of public safety. High speed vehicle pursuits are extremely dangerous, both to officers and the public. Data on police pursuits between 1996 to 2015 demonstrate this danger. During this period, an average of approximately one person died each day as a result of a police vehicle pursuit. More than a third of those killed were bystanders, and approximately one percent of them were police officers.¹ Given these dangers, it is accepted best practice that police officers not engage in a vehicle pursuit unless the pursuit is necessary for public safety and the need for it outweighs any danger it is creating. Indeed, MPD's current general order reflects these principles, and legislation that codifies these restrictions provides them with additional force. OAG looks forward to working with the Council on this bill, and the others being considered at the hearing, as they move through the legislative process.

Thank you again for creating and supporting the important work of the Police Reform Commission, and for your work to increase public safety and fairness in the District of Columbia. If you have any questions or otherwise wish to discuss, please contact Emily Gunston, Deputy Attorney General for Policy and Legislative Affairs, at Emily.Gunston@dc.gov or (202) 805-7638.

Sincerely,



Karl A. Racine
Attorney General for the District of Columbia

cc: Councilmember Anita Bonds
Councilmember Mary Cheh
Councilmember Vincent Gray
Councilmember Christina Henderson
Councilmember Janeese Lewis George
Councilmember Kenyan McDuffie
Councilmember Brianne Nadeau
Councilmember Brooke Pinto
Councilmember Elissa Silverman
Councilmember Robert C. White, Jr.
Councilmember Trayon White Sr.

¹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Police Vehicle Pursuits, 2012-2013," May 2017, available at <https://www.bjs.gov/content/pub/pdf/pvp1213.pdf>.